



RESEARCH PAPER 98/33

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The Teaching and Higher Education Bill [HL]: **Financial provision for Higher and Further Education**

Bill 145 of 1997/98

The National Committee of Inquiry into Higher Education (the Dearing Inquiry) was appointed with bipartisan support by the Secretaries of State for Education and Employment, Wales, Scotland and Northern Ireland on 10 May 1996. The Committee's findings were published in July 1997 and the Government responded with its proposals for the future of student support on 23 July 1997. Part II of *The Teaching and Higher Education Bill* will enable the implementation of the Government's proposals; much of the detail of the new system will be contained in regulations. Part III of the Bill introduces a right to paid time off work for 16 and 17 year olds who have not achieved level 2 qualifications so that they can study or train towards them.

This paper provides background and comment on Parts II and III of the Bill, including comment on its progress through the House of Lords.

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CONTENTS

Summary	5
I The existing system of student support	7
A. Maintenance grants	7
B. Student loans	9
C. Access Funds	11
II The Government's proposals for student financial support and tuition fees	12
A. Existing Students	12
B. New Students	13
C. Studying in Scotland	15
D. Students from the European Union	16
E. Loan repayment	17
III General comment on the Government's proposals	19
A. Access to higher education	19
B. Graduate incomes	27
C. The Australian experience	27
D. Higher education funding	28
IV Student finance, amendments and discussion in the Lords	32
A. Clause 19 (New arrangements for giving financial support to students)	32
1. Regulation making powers	32
2. The abolition of maintenance grants	35
3. Increase in tuition fees	40

4.	Studying in Scotland	40
5.	Part-time students	43
6.	Disabled students' income	44
7.	Independent student status	44
B.	Clause 20 (Transitional arrangements)	45
C.	Clause 21 (Imposition of conditions as to fees at further or higher education institutions)	46
1.	Universities' academic freedom	47
2.	Oxford and Cambridge	50
3.	The legal basis for charging tuition fees	51
D.	Clause 22 (Expenditure eligible for funding)	53
E.	Clause 23 (Interpretation of Chapter I)	53
F.	Clause 24 (Grants and loans: Scotland)	55
G.	Clause 25 (Imposition of conditions as to fees at further and Higher education institutions in Scotland)	56
H.	Clause 31 (Northern Ireland)	56
V	Right to time off for study or training	57
A.	Background	57
B.	The Bill	59
C.	The debate in the Lords	61

Summary

From 1962 until 1990 full-time UK based students studying for a first degree received 100% grants for maintenance, means tested according to parental income. Student loans were introduced in the 1990/91 academic year; these have progressively replaced grants for living costs. At present students who are eligible for full maintenance support receive £3,440 a year or £4,245 in London, 50 per cent through a means tested grant and 50 per cent through a subsidised loan. The parents of 'better off' students are expected to make a contribution of up to £2,000 per year to supplement the loan. Graduates pay back loans in fixed, mortgage type repayments but can defer repayment if their incomes are low; repayments are not income contingent. Part-time and postgraduate students (other than those on teacher training courses) have no general entitlement to public funds for living costs.

Between 1962 and 1977 both fees and maintenance costs formed part of the 'requirements' of a student. These were offset against the 'resources' of the student and his or her parents. Thus, the actual parental contribution was assessed on the basis of fees *and* maintenance. Since October 1977 home students with mandatory awards have not been required to pay any tuition fees; they have been paid direct by LEAs. LEAs currently receive 100% specific grant under section 209 of the *Education Reform Act 1988* on expenditure that has been properly incurred under the Regulations.

Further information on the history of student support and tuition fees can be found in Library Research Paper 97/119, *Student grants, loans and tuition fees*.

The National Committee of Inquiry into Higher Education (the Dearing Committee) was appointed with bipartisan support by the Secretaries of State for Education and Employment, Wales, Scotland, and Northern Ireland on 10 May 1996. It was charged with making recommendations on how the purposes, shape, structure, size and funding of higher education, including support for students, should develop to meet the needs of the UK over the next 20 years. The Committee published its report in July 1997.

The Committee looked at both the short and long term funding requirements of the higher education sector and estimated a need for an additional £350 million in 1998/99 and £565 million in 1999/00. Changes to student support levels were identified as necessary in the short term and in the long term the Committee noted that maintenance support for students should be improved. Specifically, the Committee recommended that the Government should introduce, by 1998/99, income contingent terms for the payment of any contribution towards living costs or tuition costs sought from graduates in work. After studying various options the Committee came down in favour of retaining the current maintenance system of 50 per grants (means tested) and 50 per cent loans (with income contingent repayments) and the

Research Paper 98/33

introduction of a contribution to tuition fees of around 25 per cent, also through an income contingent mechanism (further information on the Dearing recommendations can be found in Library Research Paper 97/119).

The Secretary of State for Education and Employment issued the Government's response to the Committee's proposals on student support on 23 July 1997. The Government accepted the Committee's recommendation that system of funding universities needed to change in order to avoid cuts in standards and to allow more students to go into higher education; however, the Government's proposals for the student support system differ from those produced by the Dearing Committee in some significant ways (David Blunkett's statement setting out the Government's proposals is reproduced in full in Library Research Paper 97/119).

The Government is proposing to:

- introduce a tuition fee contribution for students of up to £1,000 per year in 1998/99 (students from 'lower income' families will be exempt from this contribution);
- replace part of the maintenance grant with a loan in 1998/99; from 1999/2000 maintenance grants will be replaced entirely by income-related loans;
- introduce an income-contingent mechanism for the repayment of student loans;
- introduce an additional maintenance loan equivalent to the tuition fee for students from 'higher income' families;
- introduce a supplementary hardship loan of £250 per year.

Part II of the *Teaching and Higher Education Bill* will implement the Government's proposals for student finance and higher education funding in England, Wales and Scotland. Associated regulations will be laid before the House once the Bill receives Royal Assent. Clause 31 allows for parallel provisions to be made for Northern Ireland.

Part III of the Bill introduces a right to paid time off work for 16 and 17 year olds who have not achieved level 2 qualifications so that they can study or train towards them. It is estimated that 115,000 young people might qualify for the right. This forms part of a broader initiative, Investing in Young People, which is designed to bring all young people up to this basic level of qualification. The Labour Party originally proposed, in a 1996 policy document, that employers should be obliged to ensure that unqualified 16 and 17 year olds studied for one day a week. The Manifesto replaced the obligation on employers with a "right to study ...at college" for the employees. Following consultations, the Labour Government has modified the proposal still further, so that the right is to a reasonable amount of time off to study either at college or in the workplace.

I The existing system of student support

The existing system of student support has three main elements:

- the continuing availability of a means-tested basic maintenance grant and supplementary allowances for categories such as disabled students and those with dependants;
- a non-means tested Government loan facility offered at nil real interest (i.e. the nominal rate of interest payable on the loan is set equal to the rate of inflation - in real terms an interest free loan); and
- Access funds for certain students facing financial difficulties. These funds are cash limited by the Government and are paid at the discretion of the university or college where the student is studying.

A. Maintenance grants

Section 1 of the *1962 Education Act* places a duty on LEAs to make awards¹ to persons ordinarily resident in their area in respect of attendance at full-time first degree courses; courses for the Diploma of Higher Education; courses for the Higher National Diploma; and courses for the initial training of teachers. All other conditions and provisions concerning mandatory awards are specified in regulations made under the Act. The regulations currently in force are the *Education (Mandatory Awards) Regulations 1997*.² The arrangements in Northern Ireland are virtually the same as those in England and Wales; the system is administered by the Northern Ireland education and library boards. The relevant legislation is the *Student Awards Regulations (Northern Ireland)* made under Article 50(1) of the *Education and Libraries (Northern Ireland) Order 1986*.

In Scotland the Students' Allowances Scheme, which is also very similar to that operated in England and Wales, is administered by the Student Awards Agency. Students in Scotland receive a slightly lower maintenance allowances than those in England and Wales. The relevant legislation is the *Education (Scotland) Act 1980* and the *Student's Allowances (Scotland) Regulations 1996*³ as amended by the *Education Authority Bursaries and Students' Allowances (Scotland) (Amendment) Regulations 1997*.⁴

¹ An award includes money towards living costs (the grant) and the college's tuition fees

² SI 1997/431

³ SI 1996/1754

⁴ SI 1997/1049

Research Paper 98/33

In order to qualify for a mandatory award, students must have been 'ordinarily resident' in the UK, Channel Islands or the Isle of Man for the three years preceding the academic year in which their course begins. There are certain exceptions to this rule, e.g. where a student's parents have been temporarily employed abroad.

Grant rates for the 1997/98 academic year in England and Wales are set out in the table below:

In London	Elsewhere	Living at parental home
£2,160	£1,755	£1,435

In addition to the basic grant some students will qualify for supplementary allowances such as the 'extra weeks' allowance (for students who are required to study beyond the period covered by the basic grant), and allowances for dependent children or disabled students.

Maintenance grants are means-tested. A student's parents, their husband or wife, or the student themselves, may be expected to contribute towards their grant. In the case of a student's parents, the LEA works out their 'residual income' by taking their gross income less certain deductions, chiefly for other adult dependants, interest payments, life insurance and pension scheme contributions. After the residual income is calculated the LEA works out the parental contribution according to the following scale.⁵

Parent's residual income	Their contribution
£	£
below 16,450	no contribution
16,450	45
20,000	318
25,000	828
30,000	1,372
38,000	2,415
45,000	3,349
50,000	4,015
55,000	4,682
64,470 or more	5,945

The parental contribution cannot be more than the maximum grant that the student is entitled to and the contribution is reduced where the parents have other dependent children. In the case of married independent students, the spouse's contribution is similarly based on residual income. No contribution is required where the income is less than £13,015.

⁵ DfEE *Student Grants and Loans: A brief guide for higher education students 1997/98*

Students are allowed to receive a certain amount of income from various sources, e.g. scholarships or sponsorships, before this is taken into account for grant assessment purposes. Students who receive income in excess of these amounts have their grant entitlement reduced pound for pound.⁶

Expenditure on mandatory awards made to students by LEAs in England and Wales in the 1995/96 academic year was £2,059 million of which £1075 million was for maintenance grants.⁷ The parents of some 198,000 (33%) dependent students were assessed as having to make a nil contribution to grant because their income was £15,510 or below. The parents of a further 149,000 (25%) dependent students were required to make a contribution of between £45 and £1,000 because their income was between £15,510 and £25,300.⁸

Expenditure on maintenance element of mandatory awards

England and Wales: £ million

	cash	1996/97 prices
1987/88	496	748
1988/89	526	743
1989/90	587	775
1990/91	701	857
1991/92	813	934
1992/93	1,008	1,112
1993/94	1,098	1,177
1994/95	1,227	1,296
1995/96	1,119	1,149
1996/97 estimated outturn	1,017	1,017

Source: DfEE Departmental Report 1997 (Cm 3610) and earlier editions

B. Student loans

The operation of the loans scheme is currently governed by the *Education (Student Loans) Regulations 1997*;⁹ these regulations apply throughout Great Britain. The Regulations cover: the eligibility conditions for loans, loan rates, indexation, repayment requirements, deferment and cancellation of loans.

⁶ Any income from casual or part-time work is disregarded.

⁷ The Secretary of State pays LEAs 100% specific grant on expenditure that is properly incurred under the Regulations.

⁸ HC Deb 31 July 1997 c.502W

⁹ SI 1997/1675

Research Paper 98/33

Students taking full-time courses of higher education below post-graduate level will usually be eligible for a loan if they are aged less than 50 when the course begins and have been ordinarily resident in the UK, the Channel Islands or the Isle of Man, for the three years before the start of the course. Applicants must have a bank or building society account; must not be in default on repayments on a previous loan under the scheme; and must enter into a loan agreement by 31 July in the academic year.¹⁰

Students are not required to repay their loans until the April after they finish or leave their courses. Repayments are usually made in the form of fixed monthly instalments; most commonly 60 instalments over five years. Students may defer loan repayments for a year at a time if their income is not more than 85 per cent of national average earnings (£15,702 up to 31st July 1997). The Government announces the deferment threshold for each year in June.

Disabled borrowers may also have their repayments deferred if their income is above the deferment level and they have "major special costs" which are not covered by benefits received, or by their employers, and which take their income below the deferment threshold.

Loans are cancelled in the event of death and if unpaid because of deferment, unless the borrower is in default, the loan is cancelled after 25 years or when the borrower reaches the age of 50, whichever is the earlier.

The loan facility is not subject to a means test and is offered at a nil real interest rate. The maximum loan available in the current academic year in England and Wales is set out below. In the final year of study the loan facility is less than in other years because it is not meant to cover the summer vacation after graduation:

	full year	final year
Students living away from their parental home and studying:		
In London	£2,085	£1,520
Elsewhere	£1,685	£1,230
Students living at their parental home	£1,290	£945

¹⁰ HC Deb 3 December 1991 c.92W

The scheme is administered by the Student Loans Company Ltd (SLC) which is based in Glasgow. The SLC is wholly owned by the Government; funding for both loans and operations is provided by Government and, accordingly, the company makes neither a profit nor a loss. Within the limits of the financial memorandum between the SLC and Government the company is required to operate as an independent company and, as far as possible, commercially.¹¹

In the academic year 1995/96 some 946,000 students were eligible for loans of whom 560,000 took up their entitlement. This represented a take up rate of 59% and an increase in loans paid of 8% over the 1994/95 academic year.¹² The average individual loan value in 1995/6 was £1,252; by the end of the 1995/96 academic year the total loans paid out under the scheme had reached 2.3 million.¹³

At 31 March 1997 49 per cent of graduates were deferring repayment of loans amounting to around £465 million; 9.3 per cent of graduates, who owed some £10.8 million, were in default or in arrears.¹⁴

C. Access Funds

Access funds enable educational institutions to provide discretionary payments to students who have financial difficulties and for whom the grant and loan are not enough. From the outset it was made clear that these funds were meant to help only in cases of extreme difficulty.

Access funds are allocated to individual institutions by the Higher Education Funding Council. Each institution is responsible for deciding which students should receive payments and for all other matters relating to the administration of the funds in accordance with the DfEE's conditions. In the 1996/97 academic year the amount available for eligible students in England and Wales was around £23 million.

¹¹ SLC Annual Report 1994, Chairman's statement

¹² SLC Annual Report 1996, p.9

¹³ *ibid*

¹⁴ HL Deb 19 June 1997 c.125WA

II The Government's proposals for student financial support and tuition fees

Since the Secretary of State issued his statement on 23 July 1997 several aspects of the Government's proposals have been clarified. The Bill does not contain the detail of the new financial support system, this will set out in future regulations. The key changes are:

- the introduction of a tuition fee contribution for students of up to £1,000 per year in 1998/99 (students from 'lower income' families will be exempt from this contribution);
- the replacement of part of the maintenance grant with a loan in 1998/99; from 1999/2000 maintenance grants will be replaced entirely by income-related loans;¹⁵
- the introduction of an income-contingent mechanism for the repayment of student loans;
- the introduction of an additional maintenance loan equivalent to the tuition fee for students from 'higher income' families;
- the introduction of a supplementary hardship loan of £250 per year.

A. Existing students

In 1998/99 and beyond the financial support arrangements for existing students will remain largely unchanged. There are two categories of students who will start courses in 1998/99 but who will be treated as though they are 'existing' students for the purposes of student support. They are:

- students who fall within the 'gap year' scheme, announced on 14 August 1997. These are students who had received, by 1 August 1997, a firm offer of a place on a course deferred until 1998/99, or a provisional offer which was subsequently confirmed; and
- students who were unable to start a higher education course in 1997/98 because their A-level (or equivalent) grades were inadequate, but who will be doing so in 1998/99 after having their grades raised on appeal.

¹⁵ But see discussion on the Opposition amendment to the Bill on Report, pp 35-9

The following categories of student will also be treated as existing students in 1998/99:

- students who are already attending a Higher National Diploma (HND) or DipHE course in 1997/98, and who go on to a degree course immediately after completing the first course;
- students who are on a foundation year in 1997/98 and will be going on to an HND or degree course in 1998/99, where the foundation course is an integral part of the HND or degree course.

Tuition fees for existing students will continue to be reimbursed in full for most students from public funds through the mandatory award system; entitlement will be assessed by local authorities. Existing students will be eligible for a grant (subject to a means test) for the duration of their course. They will also be eligible for loans repayable on the existing mortgage-style basis.

B. New students

New students in the 1998/99 academic year will be liable to contribute up to £1,000 per year towards their tuition fees. The local education authority will pay the £1,000 fee charged by the student's higher education institution (HEI), less any contribution from the student or their family, direct to the HEI. Any contributions due will be paid by the student to the HEI directly. In 1998/99 the LEA will decide the student's award, which will cover fees as well as maintenance grant, by working out the following:¹⁶

- The maximum amount that they are entitled to. This means the basic award plus any extra allowances they can claim;
- Any contribution towards the above from the student, their parents or their husband or wife. This depends on their income.

The award that the LEA pays is the maximum amount minus any contribution. The contribution, of up to a maximum of £1,000, will go first towards paying the student's tuition fees. Any remaining contribution will be for their living costs.

Students whose gross family income is below around £23,000 a year will be exempt from paying tuition fees; it has been estimated that this exemption will affect about 30 per cent of

¹⁶ DfEE, *Progress Report on New Student Support Arrangements in Higher Education From 1998/99*, January 1998

students (where parental income is taken into account).¹⁷ Those with a gross family income of less than about £35,000 a year will pay less than £1,000 (estimated to affect a further third of students).¹⁸ The Government has stated that 'no student or parent will have to make a higher up-front contribution than under the current arrangements. For example, a parent who under the current system would contribute £1,500 a year towards living costs will under the new arrangements contribute £1,000 to fees and £500 to living costs.'¹⁹

It has been reported that students starting their degree courses in 1998/99 will be given extra time, i.e. up to the start of their second term or semester, to pay any tuition fees due.²⁰

Students studying for the Post-Graduate Certificate in Education (PGCE) will be exempt from the £1,000 tuition fee contribution as 'the Government has a key interest in the effective training of teachers and in maintaining a healthy supply of teachers.'²¹ Students on medicine and dentistry courses in England and Northern Ireland will be treated in the same way as other students for the first four years of their courses. In year five and beyond they will not have to pay tuition fees and non-repayable bursaries, assessed against family income, will be available to help meet living costs.²² The maximum tuition fees contribution, subject to assessment against family income, will be £500 in a year when a student spends the entire year of a course on a sandwich placement or in full-time study abroad.²³

The basic grant rates in England and Wales in 1998/99 will be:²⁴

Students living away from their parent's home and studying:

- in London	£1,225
- elsewhere	£ 810

Students living at their parents' home

£ 480

¹⁷ *Investing in the future: Supporting Students in Higher Education*, DfEE, September 1997

¹⁸ *ibid*

¹⁹ *ibid*

²⁰ 'V-cs bow to pressure to extend fee deadline', *The Times Higher*, 23 January 1998

²¹ *Investing in the future: Supporting Students in Higher Education*, DfEE, September 1997

²² *ibid*

²³ *ibid*

²⁴ DfEE, *Progress Report on New Student Support Arrangements in Higher Education From 1998/99*, January 1998

In 1998/99 student loans will not be means tested; they will be partly means-tested from 1999/2000. The maximum loans in 1998/99 for new students in England and Wales will be:²⁵

Students living away from their parents' home and studying	Full Year	Final Year
- in London	£3,145	£2,565
- elsewhere	£2,735	£2,265
Students living at their parents' home	£2,325	£1,970

The equivalent rates of student grants and allowances in Scotland for 1998/99 can be found in Deposited Paper /3 5834.

All eligible full-time students who are new students in 1998/99 will be able to apply for a discretionary loan of £250. These loans will be available to contribute to the living costs of students in financial hardship. Each individual HEI will manage its own allocation for these loans; the total amount available will be cash limited.

C. Studying in Scotland

The Scottish Office has announced that Scottish undergraduates will not be charged the contribution to tuition fees in the additional (Honours) year of their courses.²⁶ The Student Awards Agency for Scotland will pay the tuition fee for Scottish students in Scottish higher education institutions for the fourth or honours year of courses that are a year longer than comparable courses elsewhere in the UK.²⁷ On the question of non-Scottish students studying in Scotland the Scottish Office has stated:²⁸

'It will be a matter for the Student Support Agencies elsewhere in the UK whether they give comparable treatment to their students coming to study in Scotland. Many of those with A levels, could be admitted into the second year of Scottish courses and complete their degrees in three years. At present, only 10 per cent of this group take up the option.'

²⁵ *ibid*

²⁶ Scottish Office press notice 1581/97, 27 October 1997

²⁷ HC Deb 2 February 1998 c.493W

²⁸ Scottish Office press notice 1581/97, 27 October 1997

The Government has confirmed that students domiciled elsewhere in the UK who choose to attend a Scottish university will be liable to pay tuition fees for the fourth year of their courses (subject to the means test).²⁹ EU students who attend a Scottish university will be treated in the same way as students domiciled in Scotland (see section below).

D. Students from the European Union

Under the Government's proposals students from other European Union countries will be charged tuition fees on the same basis as home students, i.e. they will make an annual contribution to fees assessed against family income.³⁰

Since September 1986, following a judgement of the European Court of Justice (ECJ),³¹ students from the European Union attending courses designated for mandatory awards purposes have had their fees reimbursed by the Government if they satisfy the conditions for eligibility corresponding to those which apply to UK students. The principle behind this arrangement is that the UK has an obligation as a member of the EU not to discriminate against nationals of other EU countries in access to vocational training. Vocational training has been given a very wide definition by the ECJ and incorporates university courses.³²

The DfEE is proposing that from 1 September 1999, a central unit in the Department will deal with all aspects of EU applications (including means testing and paying support for fees) from those who wish to study at an institution in England and Wales.

In 1998/99 LEAs will continue to have legal responsibility under the Mandatory Awards Regulations for handling new EU applications. The DfEE has offered practical assistance to LEAs in dealing with this responsibility. In particular, it has offered to undertake the means testing of all new EU applicants on LEAs' behalf without charge; full details of the scheme are described in a letter from Baroness Blackstone to Baroness Blatch dated 26 February 1998.³³ Separate arrangements are being made for the assessment of EU students who wish to study in Scotland or Northern Ireland; Departmental guidance is to be made available to the Student Awards Agency for Scotland and the Education and Library Boards in Northern Ireland.³⁴

²⁹ But see pp 40-43 on the Opposition amendment concerning students studying in Scotland secured on Report.

³⁰ *Investing in the future: Supporting Students in Higher Education*, DfEE, September 1997

³¹ *Gravier v City of Liege*, case 293/83 [1985] 3 CMLR 1

³² *Blaizot v University of Liege*, case 24/86 [1989] 1 CMLR 57

³³ Deposited Paper /3 6114

³⁴ *ibid*

E. Loan repayment

After graduation students will not begin to repay the financial support they have received until their income is at least £10,000 per annum. The level of repayments will depend on the graduate's income; repayments are to be based on a percentage of the graduate's marginal income over £10,000. The table below gives illustrative examples of monthly repayments that will be required at different levels of income:³⁵

Annual income	Monthly repayment*	Repayment as % of income
Up to £10,000	Nil	Nil
£11,000	£7	0.8%
£12,000	£15	1.5%
£15,000	£37	3%
£17,000	£52	3.7%
£20,000	£75	4.5%

*rounded to nearest £

The length of time over which graduates will repay their financial support will depend on their income and on the total amount borrowed. Some graduates, for example those whose income never rises above £10,000 per annum, will never have to make any repayments. The rate of interest charged is to be linked to inflation;³⁶ the Government moved amendments to the Bill on Report to ensure that the rate of interest charged will be 'no more than is necessary to maintain the value of loans in real terms'.³⁷

The response to the following PQ gives an idea of how much a student on a four year degree course in England or Wales would have to borrow and at what rate they would have to repay the loan.³⁸

Mr. Willis: To ask the Secretary of State for Education and Employment what would be the maximum a student studying for a B.Ed honours degree paying full tuition fees on the grounds of parental income could borrow under the student loan scheme; how much of the loan the student would be expected to repay in the first year of a teaching career; and how many years are permitted for the repayment of the whole of the loan.

Dr. Howells: The maximum amount that a student can borrow will depend on the length of the course and the place of study, as well as the student's and his or her parents' or spouse's income. A student completing a four-year course outside London which began in 1999 who took out the full loan available each year might expect to have borrowed a total of between £10,470 and £13,710 in 1998 prices, depending on his or her individual, parental or spouse's income.

³⁵ DfEE, *Progress Report on New Student Support Arrangements in Higher Education From 1998/99*, January 1998

³⁶ see Clause 19(4)

³⁷ HC Deb 2 March 1998 cc 996-7

³⁸ HC Deb 22 January 1998 c.697W

Research Paper 98/33

A typical graduate teacher earning £14,463 in the first year of his or her career (in 1998 prices) would be expected to repay about £33.50 per month, slightly less than 3 per cent. of income. The length of the repayment period for the whole of the loan would depend on the individual graduate's income throughout his or her career and on the total amount borrowed. The more the graduate

earned, the quicker he or she would repay the loan. We estimate that a typical teacher might take around 11 years to repay.

Outstanding loans will be cancelled if borrowers have not repaid by the time they reach the age of 65, provided there has been no default.

On the method of collection, the Government's January 1998 Progress Report³⁹ states that the new arrangements will broadly work in the following way:

- students will take out their loans from the Student Loans Company (SLC), as now. The SLC will continue to be responsible for maintaining borrowers' accounts, adding interest, sending annual statements and answering borrowers' queries. Details of individual borrowers' loan accounts - other than the fact that he or she has a loan - will not at any stage be made available to the borrower's employer;

- once the borrower has graduated or stopped attending his or her course for some other reason, the SLC will notify the Inland Revenue which will check the borrower's details against the Inland Revenue's records. If the borrower is employed, it will notify the employer that loan repayments should be made in any week or month in which the borrower's income is above the threshold for payment. Deductions will then be made using a separate table - similar to tax tables - and will be shown as a separate item on borrowers' pay slips. The money deducted will be forwarded by employers to the Inland Revenue alongside tax and national insurance, and the Inland Revenue will inform the SLC of the amounts to be credited to individual borrowers' accounts. Once the loan has been fully repaid the SLC will inform the Inland Revenue, which will instruct employers to stop deducting repayments. Any overpayment will be refunded direct to the borrower by the SLC;

- if the borrower is self-employed and his or her income exceeds the threshold, repayments will also be collected alongside tax. The principles will be the same as for the employed but the detailed arrangements will be different to reflect differences in the tax system for the self-employed. For example, the timing of payments will be different;

- if the borrower is not recorded as either employed or self-employed the SLC will, with the help of the Inland Revenue, take steps to establish his or her circumstances. If the borrower is out of the labour market and has an income below the threshold, it will be recorded that no repayments are due (but subsequent checks will be made against the Inland Revenue's records so that repayments can start if and when the borrower's income rises). Borrowers who have earned income above the threshold but who are outside the UK tax system will be required to make repayments direct to the SLC.

The Government has established a working group to look at the technical details involved in the collection process.⁴⁰

³⁹ DfEE, *Progress Report on New Student Support Arrangements in Higher Education From 1998/99*, January 1998

⁴⁰ *ibid*

III General comment on the Government's proposals

A. Access to higher education

Opposition to the introduction of tuition fees and the abolition of maintenance grants has focused on the impact that this is likely to have on access to higher education. It is suggested that the means testing of tuition fees will not make up for the loss of maintenance grants to students from less well off families. A *Guardian* article assessed the impact of the proposed changes as follows:⁴¹

'The net effect of these grant and fee changes is that richer students will graduate after a typical three-year degree course with a state-organised debt worth £8,055 (£9,255 in London). This will be £3,000 more than under the present arrangement. But for the poorest student outside London, the state-organised debt after a three-year course will be £10,320 - £5,265 more than it is now. And for their counterparts at universities in London, the 'official' debt will be £12,735 - £6,480 more than now. In practice the debts may be larger. Some students will have taken the extra £250 hardship loans being offered by the Government. Others will have run up additional debts with the commercial banks. And the sums will be commensurately greater for many on courses lasting longer than three years unless they benefit from concessions mooted for trainee doctors and teachers.'

The authors of the article went on to conclude that 'it is clear that students from working class homes will graduate owing a lot more than those from middle-class backgrounds. This is a fundamental departure from past policy objectives and it does not fit snugly with the Government's aim of increasing access to higher education for the disadvantaged.'⁴²

The Government's proposals on student support differ from Dearing's recommendations in so far as the Committee recommended the retention of a 50 per cent means tested grant and a 50 per cent loan, the latter to be repaid on an income contingent basis. The Committee noted that it 'would be particularly reluctant to see any reduction in public subsidies being concentrated on students from the poorest families, and even more reluctant to see the funding being released by this, and more, being used to increase the subsidies for others'.⁴³

The reported 'scramble' for places in higher education for the current academic year was cited as evidence that the Government's proposals would deter potential students from entering higher education in the future.⁴⁴ Applications for entry to higher education are made through the Universities and Colleges Admissions Service (UCAS). The initial closing date for main

⁴¹ 'A learning curve too steep', John Carvel and Ewen MacAskill, 30 September 1997

⁴² *ibid*

⁴³ *Higher Education in the learning society* (summary report), para 108

⁴⁴ 'Lessons on fees', *Guardian*, 24 September 1997

Research Paper 98/33

applications is 15th December in the previous year, i.e. 15th December 1997 for the 1998/99 academic year.

The number of application forms received by December 15 1997 was 332,455; this represents a decrease of 4.2% (14,587) on those received by the same date in 1996. The number of UK domiciled applicants is around 11,000 lower than at the same time in the previous year; this represents a decline of 3.5%.⁴⁵

Applications from home students received by 15 December

Entry in:	Applications	Change on previous year	
		Number	%
1996	306,269
1997	310,909	4,640	1.5%
1998	299,971	-10,938	-3.5%

However, it is important to view the decrease in applications for entry in 1998 in the context of 26,000 students admitted to universities and colleges in 1997 over and above the notional target. It is assumed that more students applied to start degree courses in 1997/98 in order to avoid the imposition of tuition fees. By September 1997 over 312,000 people had gained university places, up 39,000 on September 1996.⁴⁶

The statistics produced by UCAS show that for 1998/99 the fall in the number of male applicants, down by 5.2%, is more than the decline in the number from women, down by 3.3%. In addition, the decrease has been particularly marked for mature applicants. There has been a 2% decline in applications from those aged under 21 and a 16% fall in applications from those 21 years and over. Looking at the data in more detail shows a particularly sharp fall for older mature students:⁴⁷

Applications by age of applicant (home and overseas applicants)

Year of entry	Under 21	21-24	25+	Total
1997	289,855	26,875	30,303	347,033
1998	284,439	23,262	24,754	332,455
% change	-1.9	-13.4	-18.3	-4.2

⁴⁵ Source: UCAS - <http://www.ucas.ac.uk>

⁴⁶ 'Race to beat fees continues unabated', *TES*, 19 September 1997

⁴⁷ Source: UCAS - <http://www.ucas.ac.uk>

The decline in applications has been most significant for first degree courses in Initial Teacher Training (-15.4%), Social Work (-13.6%), Engineering and Technology combinations (-15%) and Institutional Management (-12.3%). The number of applications to pre-clinical medicine has also dropped for the first time since the 1995/96 academic year. There have been significant increases in applications to Marketing and market research (+17.6%), Computer science (+13.1%) and Design studies (+9.8%).⁴⁸

Prior to the publication of these figures particular concern had been raised about the impact of tuition fees on the recruitment of graduates to certain subjects such as science and engineering. These subjects usually involve four year degree courses and will result in students paying more in tuition fees than students studying for degrees in arts subjects. The data available so far indicates some decline in applications to courses with a duration of more than the usual three years; however, it is not possible to identify the precise cause of this decline.

The drop in the number of applications from mature students has reportedly been attributed by Tony Higgins, the Chief Executive of UCAS, to the introduction of tuition fees and the phasing out of the maintenance grant.⁴⁹

'School leavers clearly see 40 years of earning power ahead of them and every prospect, with a degree, of a good job which will enable them to pay their debts off. But potential mature students may include people out of work, whose employment prospects may not be so good even after qualifications. Others are likely also to have bigger financial commitments already, like mortgages and other borrowing, and may be less willing to take on more.'

Under the existing system students who are 50 or over before the start of the first academic year of their courses are not entitled to apply for a student loan. The reason for this was given in the Parliamentary Answer reproduced below:⁵⁰

The loans scheme provides students with additional resources from the taxpayer in anticipation of their repaying that loan out of future earnings. Students over 50 generally do not have the same expectations of future earnings as younger people and they are more likely to have access to other sources of finance.

In December 1997 the Government gave the following response to a question on the position of students over the age of 50 beginning higher education in 1998.⁵¹

⁴⁸ *ibid*

⁴⁹ 'Fall in mature students blamed on tuition fees', *Guardian*, 13 February 1998

⁵⁰ HC Deb 2 April 1996 c.142W

⁵¹ HC Deb 16 December 1997 c.98W

Research Paper 98/33

Mr. Welsh: To ask the Secretary of State for Education and Employment what assistance will be given to students over the age of 50 years beginning higher or further education courses in 1998 towards the cost of living and tuition fees.

Dr. Howells: Under the new arrangements for higher education student support, students aged over 50 will be eligible for means-related help with tuition fees on the same basis as other students. In particular, if they are on low incomes they will continue to receive free tuition.

The majority of students over 50 are part-time and are therefore ineligible for student loans. Under the current student loans scheme full-time students who are aged 50 or over when their course starts are also ineligible. We do not plan any changes in the eligibility requirements for loans--including the age restrictions--for 1998-99. However, we are reviewing the position for future years in the context of the White Paper on lifelong learning due to be published in the new year. Both full and part-time students in higher education will be eligible for Access Funds from 1998-99, regardless of their age.

To date there has been no final announcement on the position of students over the age of 50 who may wish to take out a student loan for maintenance purposes in 1999/2000 and beyond; this may be a contributory factor in the decline of mature students' applications.

There has also been an overall decline in the number of people making applications to Scottish institutions for 1998 entry. This appears to have been greatest for applications from people resident in Northern Ireland and England.⁵²

Home applicants with at least one application to a Scottish Institution by county of domicile – 1997 and 1998

Year of entry:	Country of domicile				
	England	Wales	Scotland	N. Ireland	All UK domiciled
1997	25,950	851	24,184	6,792	57,777
1998	24,599	877	23,176	6,289	54,941
Change:					
Number	-1,351	26	-1,008	-503	-2,836
%	-5.2%	3.1%	-4.2%	-7.4%	-4.9%

This decline has been blamed specifically on the Government's decision to require English, Welsh and Northern Irish students, who wish to study in Scotland, to pay (subject to a means test) the tuition fee for the fourth year of Scottish degree courses.⁵³ Dundee University's applications from prospective English, Welsh and Northern Irish students are reportedly down by 13% while the number of local applications has remained 'relatively unscathed'.⁵⁴

⁵² Source: UCAS - <http://www.ucas.ac.uk>

⁵³ 'Charges blamed for Scots applications drop', *The Times Higher*, 20 February 1998

⁵⁴ *ibid*

The Scottish Education Minister, Brian Wilson, has stated that application numbers are improving as more information is given to prospective students. He has also welcomed the increase in English students seeking to enter Scottish degree courses in the second year.⁵⁵

The Government has rejected suggestions that the decline in applications for 1998/99 has arisen as a direct result of its proposals:⁵⁶

I should like to take this opportunity to refute suggestions that our proposals have put students off applying to enter higher education in 1998-99. I believe that that suggestion was made by the noble Baroness, Lady Warnock. It is true that, when the normal deadline for applications expired in December, the figures indicated a year-on-year reduction of 6 per cent. However, that was more than offset by the numbers of students choosing to start this academic year rather than defer until 1998-99. In any case, more recent figures produced in the light of the unprecedented late rush of applications suggests that this figure might be even lower. That is a welcome sign that students and parents have understood the fairness of our proposals.

Government funded research by the Policy Studies Institute (PSI) into student loans, which was published towards the end of last year, found that female and Asian students were less likely than other groups to take out student loans.⁵⁷ The PSI's report, which is based on a 1996 survey of 1,971 students in 72 institutions of higher education, found that many students declined a loan because of fear of debt. This has reinforced the view that the abolition of the maintenance grant will have a deterrent effect.⁵⁸

'Now that a much greater proportion of student finances is to come from loans, these negative attitudes towards borrowing may deter some groups of young people from entering higher education.'

However, the researchers also noted that poorer students were more likely than their better-off counterparts to take out a loan and suggested that reluctance to take out loans may not, therefore, be based on income alone.

Research into student debt repayment by the Education Research Trust has reportedly found that some graduates could take between 83 and 167 years to discharge their student debts

⁵⁵ *ibid*

⁵⁶ HL Deb 22 January 1998 c.1674

⁵⁷ *Student Loans: who borrows and why?*, October 1997

⁵⁸ *ibid*

Research Paper 98/33

under the proposed system.⁵⁹ The Trust has apparently calculated that a graduate earning £11,000 annually for his or her whole working life would have to pay the equivalent of income tax at 82p in the pound for 167 years in order to pay off an interest free loan of £15,000. A graduate earning £18,000 a year (above the national average) would take more than 20 years to pay off this amount. The Trust contrasts this scenario with a graduate who obtains a post with a starting salary of £20,000; in this case it would take just over 16 years to pay back the loan, contributing 4.5p per £1 of income. Furthermore, the Trust notes that if this graduate came from a wealthy family and needed only a £5,000 loan to cover tuition fees and modest expenses, the repayment period would be just over five years. The Director of the Trust, John Marks, has stated that:⁶⁰

'Ministers say that the loans will be no more onerous than the current system - but this takes no account of the repayment periods once students have graduated. If students are paying for the whole of their working lives, it could affect their chance of getting a mortgage - any sensible bank is going to take this into account.'

The National Union of Students (NUS) has stated that it is totally opposed to the introduction of any form of student contribution to fees. On access to higher education the NUS has said:⁶¹

'The Committee found that despite the rapid expansion of higher education, lower socio-economic groups are significantly under represented. Since expansion began rates of participation by higher socio-economic groups (I,II and III_n) and lower socio-economic groups (III_m, IV and V) have remained constant, around 75:25 for the pre 1992 universities while the new universities have a mix of 68:32.

The inability to increase the proportional participation of lower socio-economic groups needs to be addressed as this represents the greatest single failure of our tertiary education system.

NUS, along with certain vice-chancellors and many other interested groups, believes that tuition fees will prevent these ratios becoming more equal and may well further deter currently under-represented groups from entering higher education.'

⁵⁹ 'Students may face lifetime of loan payments', *Financial Times*, 2 February 1998

⁶⁰ *ibid*

⁶¹ NUS response to the Dearing Report on the Future of Higher Education, October 1997, paras 16.8-10

**Social class of home applicants accepted to degree courses
1996**

Social class		number	% of total allocated to class
I	Professional etc	35,585	17%
II	Intermediate	93,237	44%
IIIN	Skilled non-manual	26,898	13%
IIIM	Skilled manual	35,643	17%
IV	Partly skilled	16,356	8%
V	Unskilled	3,901	2%
	Total	211,620	100%
	Not known	17,065	
	Total	228,685	

Source: UCAS Annual Report 1996 entry

To put the figures in context, the distribution of the whole population of Great Britain by social class at the 1991 Census was as follows :

I	Professional	5%
II	Intermediate	29%
III(N)	Skilled non-manual	23%
III(M)	Skilled manual	21%
IV	Semi-skilled	16%
V	Unskilled	6%

The Committee of Vice-Chancellors and Principals (CVCP) supports the principle of graduates making a contribution to tuition fees, as long as this money is invested in higher education (see below) and does not believe that fees will deter participation rates:⁶²

'We share the Government's concern that such contributions to fees should not deter participation in higher education. The safeguards built into the Government's proposal - by which a third of students will pay no fee and a third will pay less than £1,000 - are welcome.'

Baroness Blackstone, Minister of State at the Department for Education and Employment, responded to a *TES* editorial on the impact of the abolition of the maintenance grant with the following letter:⁶³

'Your editorial headed 'Poor will pay most' (*TES*, July 25) expressed surprise that this government had decided to abolish the maintenance grant.

As David Blunkett made clear in announcing his proposals for reforming higher education funding, the present system is not working. Students from poorer backgrounds continue to be seriously under-represented in higher education. There is inequality in the availability of support for living costs as

⁶² *A new partnership*, CVCP's agenda for action following the Dearing Report, October 1997, para 150

⁶³ 'Student reforms will not penalise the poor', *TES*, 8 August 1997

between students in higher and further education and as between full-timers and part-timers. And graduates have to pay back loans on a fixed mortgage-type repayment basis, which is particularly hard on those at the beginning of their careers.

Our proposals have been guided by the following key principles: that access to HE should not depend upon ability to pay; that the repayment of graduate contributions to maintenance costs should be related to income; that access to high-quality HE should be improved; and that the system of funding should be made more efficient.

Under our proposals students from poorer families will have access to larger subsidised loans than those from better-off families and will not have to pay fees. It is hard to see how you can describe this system as one that 'looks set to benefit the well-off most'.

Nor can I see how you arrive at your conclusion that 'wider participation now looks less likely that it did this time last week'. By keeping education free for the less well-off, while extending existing maintenance loans, we want to encourage those groups who are currently under-represented in HE, not just the better-off, to participate in the expansion of HE, including through studying closer to home or undertaking distance-learning courses.

Our proposals are based on future earnings, not present circumstances. Repayments will be made on an income contingent basis over a considerably longer period of time than at present and without any real rate of interest. Students at the lower end of the earnings scale will not be unduly penalised as they are under the present scheme. Rather, their repayments will be related to their income.

You quote Stephen Dorrell's comments with apparent approval, overlooking the fact that the Conservatives have been eroding the student grant since 1990. This Government has faced up to the reality that, if access is to be expanded, the present system of funding HE needs to be reformed. Our proposals will raise the money needed to widen access and participation into the 21st century while exempting the less well-off from tuition fees, avoiding any increase in parental contributions and introducing an income-contingent loans repayment system.'

The Government has also cited in its support the results of a MORI poll that was carried out on behalf of the CVCP in September 1997. The poll found that 69 per cent of adults now agree that students and parents should contribute to some of the costs of higher education compared with only 42 per cent in 1991.⁶⁴ The poll also found that 83 per cent of parents are prepared to contribute to their children's tuition compared with 38 per cent in 1991. CVCP Chief Executive, Diana Warwick, reportedly commented that: 'This poll shows a remarkable shift in opinion. People now accept it's only fair that those who benefit from a university education should make a contribution as the Government has proposed.'⁶⁵

The Government's assumption that students on longer degree courses will get better jobs and receive higher financial rewards in the long-term has been questioned.⁶⁶ There is also concern that the extra financial burdens placed on undergraduate students will deter them from pursuing postgraduate qualifications for careers in research or teaching.⁶⁷

⁶⁴ DfEE press notice 322/97, 15 October 1997

⁶⁵ 'Poll backs paying for tuition', *The Times Higher*, 5 September 1997

⁶⁶ 'Staying the course', *Guardian*, 7 October 1997

⁶⁷ *ibid*

B. Graduate incomes

According to the Association of Graduate Recruiters (AGR)⁶⁸ the median graduate starting salary in 1996 was £14,750. The AGR's survey allows some analysis of graduate pay progression as it also questions those who were recruited one and three years previously. In 1996, for example, the current median salary of a graduate recruited in 1995 was £16,080, an increase of 12% over the median starting salary in 1995. This compares with an increase of 3.7% in median earnings for all full-time employees. The 1996 median salary of a graduate recruited in 1993 was £20,000, an increase of 54% over the median starting salary in 1993. This compares with an increase of 10% in median earnings for all full-time employees.

These figures back up the Government's claim that graduates can expect to benefit financially from their education; however, if the number of graduates expands substantially one may question whether this trend will continue.

C. The Australian experience

Some commentators have cited the Australian experience as evidence that the introduction of tuition fee contributions need not act as a deterrent to study. Australia introduced a Higher Education Contributions Scheme (HECS) in 1989 under which all students, including those from lower income families, were required to pay 20 percent of the cost of their tuition. Repayment takes place through automatic deductions by the Australian Tax Office with amounts dependent on income. Up-front payments originally attracted a discount of 15 per cent; this has now been increased to 25 per cent. In an article for the *Guardian Higher*⁶⁹ Meredith Edwards, Deputy Vice-Chancellor of the University of Canberra and a member of the Wran Committee which designed HECS, noted that: 'The empirical evidence is that it [HECS] has made a contribution to revenue without significantly deterring students - until the changes introduced in the last Budget'. In the 1996/97 Budget the Australian Government made the following changes to the HECS:

- differential charges for courses;
- repayment threshold reduced from A\$28,000 to A\$20,000;
- repayments increased from 2 to 3 percent;
- universities permitted to charge up-front fees from next year for up to one in four enrolments.

⁶⁸ AGR Graduate Salaries and Vacancies 1997 Survey

⁶⁹ 'The wonderful wizardry of Oz', 9 September 1997

Meredith Edwards commented that: 'One lesson from our experience is the danger of changing the rules mid-stream, and the impact that can have on student uncertainty and, potentially on enrolments...The recent changes arising from the 1996/97 Budget may have had some impact on mature students, who made 10 per cent fewer applications this year. Next year, for the first time, some universities will charge up to a quarter of their students fees up-front. This is a big departure from the principles of HECS and it will be important to monitor closely the impact on participation rates.'⁷⁰

The NUS has also pointed to changes in the Australian system as a warning as to what may happen to UK tuition fee contributions in the future:⁷¹

'From 1998, Australian universities will be permitted to charge up-front fees for under graduate places for up to 25% of enrolment. These changes are partly due to a change in Government. However, at the time of the introduction of fees, similar reassurances were given to Australian students as have been given to UK students over the past few months.'

Edwards has suggested that the British Government should consider:⁷²

- Not exempting students from lower-income families from the scheme, but instead introducing an income-contingent loan repayment arrangement for students that would cover both the tuition and living costs.
- Increasing the proportion of costs to be covered by students to 40 per cent, perhaps gradually so long as income-contingent arrangements are in place.
- Setting an up-front discount on fees of 25 per cent.

D. Higher education funding

The Dearing Inquiry estimated that an additional £350 million would be needed in 1998/99 and £565 million in 1999/2000 in order to alleviate proposed cuts in funding per student, carry out infrastructure requirements, make changes to student support levels and resume the growth in student numbers.⁷³ The Inquiry concluded that none of the options it considered for reforming student support would provide the necessary additional funding for higher education in the longer term. It felt that any option that *would* deliver the resources would place unacceptable burdens of graduates and on families of modest means, or would lead to unacceptably high levels of graduate debt.⁷⁴

⁷⁰ *ibid*

⁷¹ NUS response to the Dearing Report on the Future of Higher Education, October 1997, para 15.2

⁷² 'The wonderful wizardry of Oz', *Guardian Higher*, 9 September 1997

⁷³ *Higher Education in the learning society* (summary report), paras 84-85

⁷⁴ *ibid* para 110

The estimated savings associated with the introduction of tuition fees and the replacement of grants with loans are given in the Parliamentary Answer reproduced below:⁷⁵

Lord Whitty: The following table shows the estimated savings associated with the introduction of tuition fees and the replacement of grants with loans, along with the associated costs of extending loans, under the Government's preferred approach to the future funding of higher education announced on 23 July. Figures are shown for the financial years 1998-99 to 2000-2001 and are at 1995-96 prices. The net savings are therefore notional and have been derived independently of current expenditure plans. They are also dependent on the phasing of the introduction of the new loans arrangements.

	<i>£ millions</i>		
	1998-99	1999-2000	2000-01
Additional loans expenditure*	(400)	(750)	(1,100)
Grants savings	250	600	850
Tuition fee savings	150	250	400
Net savings	0	100	150

* Costs are shown in brackets

The CVCP is concerned to ensure that money raised from the introduction of student fees and the abolition of the maintenance grant will be reinvested into higher education as additional funding:⁷⁶

'Our acceptance of the principle of graduates contributing to tuition is conditioned by the overriding requirement for the fee income to be reserved for meeting the investment needs of higher education, as recommended by Dearing. It would be indefensible to expect graduates to make a contribution to tuition fees unless this was reinvested as genuinely additional funding to protect the quality of teaching'.

Although the Government has made it clear that universities will be responsible for collecting the fees contribution from students and will retain these funds,⁷⁷ it is also been made clear that their grants from the Higher Education Funding Council will assume this new source of

⁷⁵ HL Deb 31 July 1997 c.103WA

⁷⁶ *A new partnership*, CVCP's agenda for action following the Dearing Report, October 1997, para 151

⁷⁷ HC Deb 27 October 1997 c.680W

income.⁷⁸ When questioned on whether the savings from the abolition of student grants would be applied to higher education Dr Howells responded thus:⁷⁹

'Under the proposals announced by my right hon. Friend the Secretary of State on 23 July, mandatory student grants will be replaced with increased loans. In the short term, therefore, public expenditure on student support will not be reduced and there will be no savings on the basis of current accounting rules. Savings will be realised in the longer term as graduates begin to make repayments and will be used to improve quality, standards and opportunities for all in further and higher education.'

There is a fear amongst some vice-chancellors that if the funding crisis in higher education is not solved they will be left with extra responsibilities over standards and more demanding students but no resources with which to make the necessary improvements.⁸⁰

On financing the deficit in higher education the Secretary of State has said:⁸¹

Mr Blunkett: I agree with the hon. Gentleman that there is a shortfall and that it arises from the previous Government's settlement for higher education in the next two years. As part of the fundamental spending review undertaken by the Government, we shall address how best to meet that deficit and how to ensure that, between now and the resumption of a revenue stream for higher and further education, we can sustain standards and quality.

The NUS welcomed the Government's announcement of an extra £165 million for higher education in 1998-99, particularly the £36 million for access funds,⁸² but stated that 'the Government must look to other major stakeholders in higher education for extra funds. It is a scandal that business and industry, who profit enormously from graduates, play no formal role in the funding of higher education.'⁸³

⁷⁸ HC Deb 30 October 1997 c.867W

⁷⁹ HC Deb 27 October 1997 c.678W

⁸⁰ 'V-cs split on stand over fees', *The THES*, 19 September 1997

⁸¹ HC Deb 24 July 1997 c.1027

⁸² DfEE press notice 289/97, 23 September 1997

⁸³ NUS press notice, 'NUS welcomes £165m for Higher Education', 23 September 1997

The manner in which student loans are treated under the current Government Accounting rules has been widely questioned; the Dearing Committee commented:⁸⁴

'A fundamental problem with the Government providing loans for students is their treatment in the national accounts. Under conventional Government Accounting a loan is treated exactly like a grant in the year in which it is made. The planned introduction of a new form of accounting, resource accounting, will make clearer the fact that grants and loans are not equivalent. There will still, however, be a problem in that loans will continue to count against the Public Sector Borrowing Requirement in the year that they are advanced. This is not the approach adopted in all other countries.'

The Committee recommended that the Government should 'look urgently at alternative and internationally accepted approaches to national accounting which do not treat the repayable part of loans in the same way as grants to students'.⁸⁵ Dr Nicholas Barr, Senior Lecturer in Economics at the LSE and a research associate of the LSE's centre for educational research, has advocated the reform of public accounting rules in order to lift public expenditure restrictions on higher education spending:⁸⁶

'Australia has solved this problem; so has New Zealand. Students borrow public money, but the presentation of loans in the public accounts recognises that most lending will be repaid. What appears as public spending is not total lending to students, but only bad debts. That is exactly the way private firms account for debt.

Alongside income contingency, therefore, the big lesson from Australia is a better system of public accounts.'

The CVCP 'strongly endorses' Dearing's recommendation on the Government Accounting rules.⁸⁷

'Unless this issue is resolved, the full benefits of the Government's funding reforms will not be realised. A resolution to the problem would release more funds and thus contribute significantly to extending opportunities and financial help, for example, to part-time and postgraduate students. It would help meet the medium to long term funding needs of higher education, which Dearing calculates as rising to £2 billion by 2015-16, exclusive of the proposed review of staff pay and conditions. It might also fund some of the new initiatives recommended by Dearing, for example in information technology.'⁸⁸

⁸⁴ *Higher Education in the learning society* (summary report), para 115

⁸⁵ *ibid*

⁸⁶ 'Australian mantra to ward off (at least some) evils', *The THES*, 3 October 1997

⁸⁷ *A new partnership*, CVCP's agenda for action following the Dearing Report, October 1997, para 161

⁸⁸ *ibid* para 162

IV Student finance, amendments and discussion in the Lords

A. Clause 19 (New arrangements for giving financial support to students)

This clause (which relates to England and Wales only) provides new powers for the Secretary of State to provide financial support by way of grant or loan to students on higher or further education courses. These powers will replace those in the *Education Act 1962*, section 3 of the *Education Act 1973* and the *Education (Student Loans) Act 1990*, which will be repealed. The clause specifies a number of specific areas that any regulations issued under it may make provision for, such as eligibility for a student grant or loan, maximum amounts of grant or loan payable and the terms and conditions on which grants and loans are made available.

The clause provides in particular for any increase above inflation in the maximum level of grant for fees to be subject to the affirmative resolution procedure. Clause 19, which was previously clause 16, was amended on Report (Government amendment) to ensure that the rate of interest charged for loans will be no more 'than is necessary to maintain the value of loans in real terms'.⁸⁹ It also includes a provision enabling loan repayments to be collected with the assistance of the Inland Revenue.

During the Bill's Report Stage in the Lords two significant Opposition amendments to clause 19 were secured. The first involved the insertion of a provision that would oblige the Secretary of State to continue to provide grants to students of up to half their prescribed maintenance costs (subject to an assessment of contributions), while the remaining costs would be met by a loan.⁹⁰ The Lords also voted in favour of an amendment to remove any difference of treatment between students domiciled in Scotland and studying there, and students domiciled in England, Wales or Northern Ireland and studying in Scotland, in respect of the payment of tuition fees in the fourth or any subsequent year of a course of higher education.⁹¹ These amendments are discussed in detail under the relevant headings below.

1. Regulation making powers

During the Bill's passage through the House of Lords much was made of the fact that the Government had not issued draft regulations for consideration in association with clause 16 (which is now clause 19):⁹²

⁸⁹ HL Deb 2 March 1998 cc 996-7

⁹⁰ Clause 19(6)

⁹¹ Clause 19(7)

⁹² HL Deb 22 January 1998 c.1615

Lord Renfrew of Kaimsthorn: I rise at the earliest opportunity to raise what I believe to be an important procedural point. So far as I am aware, no draft regulations for these parts of the Bill have been placed in the Library. My noble friend Lady Blatch raised this point at Second Reading and said that it was the convention of this House--though it may not be an infallible one--that draft regulations are placed in the Library. I have in my hand the Ninth Report of the Select Committee on Delegated Powers and Deregulation. As I understand it, this debate is concerned with that report as well as with the Committee stage of the Bill. There may be issues to address later; I am aware that my noble friend Lady Blatch will propose an amendment on affirmative procedures.

In relation to Clause 16, the ninth report states, under the appropriate rubric "Henry VIII clauses":

"everything of importance will be in the regulations".

The Government defended its use of regulation making powers and provided some detail on their likely content:⁹³

What is being proposed in Clause 16 is nothing new. The current system of enabling legislation and annual regulations has worked well for 35 years without any of my right honourable friends' predecessors abusing the powers in the way the noble Earl fears. Any such abuse would in any case be open to legal challenge on the grounds of unreasonableness.

I should add that we have already included one key safeguard in Clause 16; a provision which would in practice require any increase in the level of contributions to fees above the rate of inflation to be subject to affirmative resolution. That answers a point made earlier by the noble Baroness, Lady Blatch. As I indicated at Second Reading, we also hope to amend the Bill to limit the rates of interest which can be charged on loans. I am not convinced that any further safeguards are necessary.

Concerns have been expressed that we do not yet know exactly what will be included in the regulations. It is not possible to produce draft

Where are the regulations? In the following paragraph the report goes on to say:

"We invite the House to consider whether the subject matter of the regulations under section 16 is so important that the bill should be amended to require affirmative procedure for the first regulations ... "

There I begin to touch on the amendment that my noble friend Lady Blatch will move at a later stage. I should like the Minister to give some explanation as to why we have a Bill so unsatisfactory in form that its whole content is in regulations, as is stated in the ninth report, but we do not have even draft regulations available in the Library, in accordance with what I understand to be the usual convention of the House.

regulations at the present time because some of the fine detail--for example, on how the new collections mechanism will work--is still under consideration. Nor would one normally expect to see draft regulations at this early stage in the Bill's passage through Parliament. However, the Government have made their intentions very clear, not least in the progress report which was placed in the Library at the end of last week.

The noble Earl addressed his comments to a number of specific points. Perhaps I may take a little time to deal with them. He asked what provision we intended to make in regulations made under Clause 16(2)(a), which will determine who is an eligible student. We have made clear that we intend to retain the present criteria for deciding which students will receive support. This will mean that full-time undergraduate students on designated higher education courses, plus students on part-time and postgraduate courses of initial teacher training, will normally be entitled to receive grants towards the cost of their tuition and loans for maintenance. I am afraid, therefore, that

⁹³ HL Deb 22 January 1998 c.1634-5

cab drivers doing "the knowledge" will not be eligible. Clause 16 would enable us to extend this support to students in further education or to the generality of part-time or postgraduate students, but we have no current plans to do so. Such students will, however, continue to be eligible for support towards the costs of their study on a discretionary basis.

The eligibility criteria for student loans and for support for fees under the existing arrangements are currently set out in annual regulations and summarised in the progress report, to which I referred earlier. While we have no plans to change the criteria for the 1998-99 academic year it is likely, as I have already indicated, that changes will be needed over time to take account of changes in the system of post-compulsory education. In a dynamic environment, it is important that the Government are able to respond flexibly to changing demands. The power to deal with issues relating to eligibility in regulations will enable us and future administrations to do so.

The noble Earl asked about the power to set maximum levels of support available to students under Clause 16(2)(b). The maximum amounts of grant and level to which students are entitled are currently set out in annual regulations. We are proposing no change in this respect. I am sure the Committee will agree that it is entirely sensible to make such provision in secondary legislation, given that the amounts will be adjusted routinely each year to take account, for example, of inflation. We have made clear, however, that the value of maintenance loans will be broadly equivalent in real terms to that of the current student support package. As I have mentioned, provisions elsewhere in the Bill will place limits on increases in the amount of grant which is payable towards fees; and by extension to the level of contribution which individuals and their families are expected to make.

The noble Earl asked about the provisions in Clauses 16(2)(e) and (f). These provisions give the

Secretary of State the specific power to set out in regulations the terms and conditions attaching to grants. There is nothing sinister about these powers, which broadly mirror powers in the existing legislation. Indeed, our intention is to impose terms and conditions which are broadly the same as those applied to mandatory awards currently. We need in particular to be able to ensure that grant continues to be paid only for as long as a student is attending an eligible course. So we need to be able to prevent the payment of further instalments where a student has dropped out of, or been required to leave, his or her course. We may also wish to provide for grants paid to help with living costs--for example, to students with dependants--to be repaid, in full or in part, in circumstances such as these. It is clearly right to protect taxpayers' money in this way...

The noble Earl asked about the power to specify in regulations under Clause 16(2)(g) the terms and conditions attaching to loans. That power is clearly essential: one cannot make a loan without specifying the terms on which it is made. Clause 16(3) describes in more detail the kinds of terms and conditions we have in mind; for example, interest rates, repayment terms and deferment and cancellation arrangements. In addition there will be various more technical points. For example, we will want to be able to require borrowers to inform the Student Loans Company if they leave their course early, or if they change their address.

We have made clear our intentions in relation to the terms on which the new loans will be made. Students are aware of those. The key terms--for example, in relation to interest rates and repayment terms--have been widely publicised. Further details are included in the progress report on the new arrangements to which I referred earlier. That report also explains that a working group involving officials from my department, the Inland Revenue and the Student Loans Company has been set up to consider the fine detail of the new arrangements and that further details will be published in due course.

With a view to securing adequate scrutiny of future regulations, Baroness Blatch moved an amendment on Report to require the first regulations issued under clause 19 to be laid in draft before both Houses and to be subject to the affirmative resolution procedure. Her amendment would also have required further regulations issued under clause 19, that had not been issued

in draft form and laid before both Houses, to be subject to annulment in pursuance of a resolution of either House of Parliament.⁹⁴

In response, Baroness Blackstone advised of the Government's intention to move amendments to clause 28 (previously clause 25), which provides for the making of regulations and orders under the Bill, to require the use of the affirmative resolution procedure for the first set of regulations issued under clause 19 and stated that parallel provision would be made for the equivalent Scottish regulations. The Government intends that there should be a choice in future years between the use of the affirmative and negative procedures; it has undertaken to make the student support regulations for the academic year 1999/2000 subject to the affirmative procedure.⁹⁵

Baroness Blatch withdrew her amendment.

2. The abolition of maintenance grants

The abolition of maintenance grants is not provided for on the face of the Bill; however, it is the Government's stated intention that maintenance grants will cease to be available in 1999/2000 for new students and those who began their courses in 1998/99 (aside from those who are exempt from the changes and some limited allowances).

The Government's proposals on student support differ from Dearing's recommendations in so far as the Committee recommended the retention of a 50 per cent means tested grant and a 50 per cent loan, the latter to be repaid on an income contingent basis. The Committee noted that it 'would be particularly reluctant to see any reduction in public subsidies being concentrated on students from the poorest families, and even more reluctant to see the funding being released by this, and more, being used to increase the subsidies for others'.⁹⁶

During the Bill's passage through the Lords much attention was focused on the Government's decision not to follow this aspect of the Dearing recommendations and the likely impact that the removal of maintenance grants would have on university applications, particularly from students coming from low income families. On Report, Baroness Blatch moved an amendment to clause 19 (then clause 16) to insert a provision that would oblige the Secretary of State, when issuing regulations, to continue to provide grants to students of up to half their prescribed maintenance costs (subject to an assessment of contributions); the

⁹⁴ HL Deb 2 March 1998 c.1039

⁹⁵ HL Deb 2 March 1998 c.1039-40

⁹⁶ *Higher Education in the learning society* (summary report), para 108

remaining costs would be met by a loan. On moving the amendment Baroness Blatch made the following statement:⁹⁷

My Lords, when the Government solicited support for reducing the maintenance grant, they did not make it clear that maintenance grants would be abolished completely and in one fell swoop; nor that it would be introduced to impact on students who had already selected places at university and college well before the legislation had passed through Parliament; nor that it would be accompanied by the introduction of tuition fees; nor that the proposals would impact

disproportionately on students from lower income families.

Students who had opted to take a year out between school and university were accused of being worried about nothing. This was followed by frenzied activity and some back-tracking by the DfEE. Even the criteria which determined which gap-year students were to be exempted from paying fees were subsequently changed because they were in practice unworkable.

Students can be forgiven for feeling let down by these proposals because of the indecent haste with which they were proposed as a supposed response to Dearing. Frankly, they could not have been a considered response to Dearing, first, because there was deliberate leaking of the proposals to the press the weekend before the Dearing Report was produced and, secondly, because there could hardly have been time to read the report, let alone consider its recommendations and findings between the publication of the report and the issuing of the Government's response.

Students will have noted, as indeed many of us did, the words of the Prime Minister on 14th April, only two weeks before the General Election last year, when he declared that the introduction of tuition fees paid for by students were not planned, as indeed did the right honourable Robin Cook who, on 24th April, just one week before the General Election, speaking to students, confirmed that view. Further, in an extraordinary display of ignorance, the Prime Minister on 25th February--only last Wednesday--when speaking to Parliament about student finance said that the Labour Party had accepted the Dearing recommendations. In

fact, he said that they had promised that they would specifically abide by the outcome of the Dearing Committee Report, even accusing the Conservatives of not doing so. To put the record straight, we did support the Dearing recommendations; the government of the day did not.

As the noble Baroness knows, the Dearing Committee looked very carefully at the proposition that maintenance grants should be phased out from the 50-50 grants and loans to 100 per cent. loans. After much deliberation, they concluded--and I quote from paragraph 108 of the Dearing Report:

"We would be particularly reluctant to see any reduction in public subsidies being concentrated on students from the poorest families and even more reluctant to see the funding released by this, and more, being used to increase the subsidies for others".

When students are contemplating going to university they do not make the distinction, despite what people say, between tuition fees and maintenance grants. They want to know how much money it is going to cost them. In order to take up a place they will each require approximately £4,000 per year for maintenance plus, for 66 per cent. of them, anyway, some or all of £1,000 for tuition fees to be paid up front. For the student from the lowest income families, this will mean that they will have to borrow more than their fellow students who come from higher income families and repay the loan regardless of parental income. It is indefensible that a proposal leaves a student from a lower income family worse off, with a greater burden of debt, than a student from a higher income family. If ever there was a desire to introduce a disincentive for people from lower income backgrounds, especially from families with no tradition of entering university, the Government could not have done better.

We know already that there has been an overall decline in applications for places. The decline is very much more marked in two categories: students in the age bracket 21-24 and students over

⁹⁷ HL Deb 2 March 1998 cc 997-9

the age of 24. I would suggest it is the sudden quantum leap in the overall level of borrowing--that is, tuition fees plus maintenance grants--which will act as a deterrent for the students. Maintenance for the lowest income families is by far the greatest part of such borrowing.

My amendment would mean a level playing field for students leaving university, whatever their family background and whatever their future earnings. It has to be the irony of all time that a Labour Government is penalising more heavily lower income families, and I predict that there will be much disquiet in another place on this issue. I beg to move.

Baroness Blackstone, for the Government, responded to the Debate on Baroness Blatch's amendment:⁹⁸

My Lords, no, we have not denounced the Dearing recommendations. As my noble friend Lady Dean indicated, we have accepted the principles of the Dearing Report and built on them. We have accepted the proposals as regards ensuring that there should be access for students from all social backgrounds to higher education. My right honourable friend the Prime Minister made that absolutely clear. We accepted the principle that fees should be charged although we decided to mitigate them by means testing them.

We support a contribution to fees. We also support improved loan repayment arrangements. I must put the emphasis here on "improved". We support improved arrangements to encourage access. It is true, as some Members of your Lordships' House, including the noble Baroness, have been at pains to point out, that we have not adopted all the detail of Dearing's recommendations on student funding. However, our plans are in accord with the principles of Dearing. I am grateful to my noble friend Lady Dean for her clear explanation of the Dearing Committee's position and the Government's modification of it by means testing the fee and balancing that with the abolition of grant.

I say to the noble Baroness, Lady Park, that I very much share her view that we want to maintain the highest possible standards in our higher education system. As someone who has worked for many years in our universities, I have always fought personally to do that and I shall continue to do so. I say to her that no student will pay any more up front under the scheme. From what the noble Baroness was saying, I believe that she was implying that they would; that they would be

unable to afford to live and would have to take jobs because they would have less money. But they will not. They will have exactly the same amount of money as they have at the moment, but it will be in the form of a loan. It is very important that we do not have any misunderstanding.

We are abolishing grants because we believe that they have no place in a modern student support system. It is right that students' living costs should be met out of their future earnings and in part by their parents where they can afford to do so. We stated clearly in our manifesto that on those grounds we would abolish grants and replace them with income-contingent loans. So no member of the electorate and no Member of this House or student can have any doubt about that. We are talking about a manifesto commitment.

It has also been said, by the noble Baroness, Lady Blatch, in particular, that the Government rushed their response to the Dearing Committee's report. The Government responded rapidly and decisively. Having inherited a worsening funding crisis--some noble Lords are laughing. I do not believe it a laughing matter that a government should respond decisively to a very important set of recommendations of this kind.

Having inherited a worsening funding system in higher education, we could hardly stand idly by once Dearing had reported. We had to act quickly, and that quick response has resulted in an extra £165 million for the higher education sector for 1998-99. I know that that has been widely welcomed by many of my former colleagues in the university sector. In fact, I have not heard of a single person who has not welcomed it. Nor did we

⁹⁸ HL Deb 2 March 1998 cc 1006-10

want to leave students and their parents in the dark over the summer as they made important decisions against UCAS deadlines. That is why we mobilised our information campaign as quickly as we could. LEAs and institutions have already been notified of the detailed procedures. We have consistently kept them informed of developments and will continue to do so. The Local Government Association and the CVCP have had a key role in the development of the implementation arrangements for the new system.

When one considers the scale of our information campaign, and the positive response we have had to it, it is rather unconstructive for noble Lords to persist in suggesting that students are in the dark. Our freephone orderline has received about 33,000 calls, and sent out over 1 million booklets, posters and other materials explaining the new student support arrangements. Over 80 per cent. of those organisations which received initial copies of the leaflets have ordered more for their students. Clearly they recognise it as a worthwhile and informative read. We also know from research that a high proportion of would-be students have read the information and understand what the new arrangements mean for them; 99 per cent. of them were aware of the introduction of tuition fee contributions; 87 per cent. knew that the contribution would depend on income and 80 per cent. knew that increased maintenance loans would be available. Equally encouraging awareness was shown by potential mature students, even though those students are harder to target with information. I have already recognised that and said that we want to address that concern. I think that the vast majority of people know what our plans are. Our intentions in this area are clear.

My noble friend Lord Davies referred to the previous government's legislation. I would remind Members of your Lordships' House that when the current mixture of grants and loans was introduced by the previous government we were assured before the publication of the student loans Bill that loans would be introduced gradually, and would not constitute 50 per cent. of the total maintenance package until the year 2007-08. But only four years after the Bill was enacted the previous Government announced without any consultation or debate that the process would be accelerated, and indeed the 50 per cent. Target was reached by 1996-97. So I am surprised that some noble Lords opposite have developed an attachment to grants

when before they were eager to reduce the value of the grant as quickly as possible.

We have heard some alarmist statements about what the effects of our proposals might be, but little hard evidence, I am afraid. I gave some evidence about the impact of loans in Committee, and I shall repeat it here. In the five years before the current loans scheme was introduced, participation among younger students from lower socio-economic groups rose by only two percentage points. In the following five years, between 1990 and 1995, when students received an increasing amount of support through loans, the rise was some seven percentage points. I am sure that the noble Lord, Lord Baker, will remember that and that he will be pleased that that was the impact.

Of course there were, and there remain, many reasons influencing a young person's choice to enter higher education. By far the most important of these is the level of educational attainment reached at school. Quite simply, if a young person gains good A-level results--or the equivalent in vocational qualifications--he or she is likely to go into higher education. Financial considerations are secondary. Nevertheless, the key point is that providing maintenance support in the form of loans does not act as a disincentive; or, to put it another way, there is no evidence to suggest that grants help to encourage students from lower socio-economic groups to enter higher education. What matters is that students have access to the funds that they need while they are studying.

The noble Baroness, Lady Young, referred to the impact of our arrangements on applications. I have already said in answer to an earlier group of amendments that applications from students under the age of 21 are down by less than 1 per cent. Indeed, the National Union of Students has accepted that it is reasonable to expect that maintenance costs should be repaid later on the new basis that we are introducing.

Several Members of your Lordships' House have argued that under our proposals, students from poorer backgrounds will incur the highest debt, and that this is unfair. I would remind your Lordships that it is a fact of life--a hard fact of life, I acknowledge--that students from wealthier backgrounds are likely to receive the more support from their parents, and so need less support from other sources. Our proposals take account of that

fact by ensuring that students have access to the resources that they need when they are studying, regardless of their or their families' circumstances. Of course, the amount that individual students borrow will depend on a variety of factors, including where they decide to study and the length of the courses they take, as well as their family income.

In judging the fairness of our proposals, I would also ask Members of your Lordships' House to take a somewhat longer view of the support that the Government are making available to students from poorer backgrounds. I have already made it clear that the terms on which we are proposing to make student loans are generous. Loans will be heavily subsidised to ensure that graduates repay no more in real terms than they borrowed, however long the loan is outstanding. In most cases, graduates will repay their loans over a longer period than they would under the current arrangements. On this basis, therefore, students from poorer backgrounds who take out the full loan available to them will be eligible to receive the largest public subsidy over time. This subsidy is, of course, additional to the support that students from poorer backgrounds will receive towards the cost of their tuition. Indeed, they will not pay a tuition fee.

The introduction of fair and progressive repayment arrangements under our proposals was a key factor leading to our conclusion to abolish maintenance grants. Income-contingent loans will be quite unlike other forms of borrowing in that the level of repayments will be commensurate with the borrower's ability to repay. In this respect, our proposed arrangements are most attractive (as far as potential lenders are concerned) than the existing loans scheme, as the right honourable

friend of the noble Baroness, Lady Blatch (the shadow spokesman on education in another place) has publicly admitted.

We have consistently made it clear that our proposals are aimed at generating additional resources for investment in further and higher education. The Government are not ashamed to admit that abolishing maintenance grants, rather than keeping them at their present level, will make much more money available for colleges and universities. The effect of this amendment, however, would be to deny institutions and students the benefits of this additional investment. I note that the noble Baroness, Lady Blatch, has failed to suggest an alternative way of bridging the funding gap that would result were her amendment to be accepted.

The noble Baroness asked me to reflect on her amendment between Committee and now--and I have done that. I have also listened to the arguments that noble Lords have advanced in favour of retaining maintenance grants, the most compelling of which relate to access. Like all other Members of your Lordships' House, I want to be sure that we do not in any way damage that access. However, I would invite your Lordships again to consider the evidence that I have cited. That evidence shows that grants have not discouraged participation by students from lower socio-economic groups; that even the flawed system of loans which currently exists has not deterred them from entering higher education; and that graduates are not disadvantaged by a system which enables them to contribute to the costs of their education on an income-contingent basis. I would, therefore, again urge Members of your Lordships' House to reject this amendment.

Baroness Blatch's amendment was agreed to on a division. The Government will seek to overturn this amendment in the Commons.⁹⁹

⁹⁹ HL Deb 10 March 1998 c.191

3. Increases in tuition fees

During the Bill's progress through the Lords concern was expressed over the possibility that at a future date a Government would increase the tuition fee payable above £1,000 or 25% of the total tuition fee. On Report Lord Renfrew of Kaimsthorn sought an amendment to clause 16 (now clause 19) to implement the Dearing recommendation that an independent review should take place prior to an increase in tuition fees **in addition** to the requirement of an affirmative resolution of both Houses of Parliament.¹⁰⁰

Lord Whitty responded that clause 16(5) (now clause 19(8)) explicitly provided for parliamentary approval to be sought before the maximum contribution to fees could be increased by more than the rate of inflation.¹⁰¹ Lord Renfrew withdrew his amendment.

At Third Reading Baroness Blatch moved a similar amendment to require an independent review before the Secretary of State could increase grants for tuition fees. This¹⁰² amendment was negated on a division.

4. Studying in Scotland

As explained earlier in this paper, the Scottish Office is proposing that Scottish domiciled students on four year degree courses should pay a maximum of £3,000 in tuition fees; this is in line with the Garrick Committee's¹⁰³ recommendation that graduates of a four year degree course should not be burdened unduly by comparison with shorter degree courses in England and Wales. By comparison, Students domiciled in England, Wales or Northern Ireland who wish to study in Scotland, currently some 5,000 applicants per year,¹⁰⁴ will be required to pay fees of up to £4,000. A further complication arises because EU law provides that an EU national from another member state is entitled to equal treatment with nationals of the host state in regard to conditions of access to all university level courses; therefore, the Government is proposing that EU students studying in Scotland will be treated in the same way as Scottish students and will be required to pay a maximum of £3,000 in tuition fees.

This proposal has attracted a great deal of criticism on the grounds that it discriminates against non-Scottish students who wish to study in Scotland and may have a detrimental effect on numbers applying to Scottish universities; 22,000 students from England, Wales and

¹⁰⁰ HL Deb 2 March 1998 cc 1036-7

¹⁰¹ HL Deb 2 March 1998 c.1038

¹⁰² HL Deb 10 March 1998 cc163-75

¹⁰³ The equivalent of the Dearing Committee in Scotland.

¹⁰⁴ HL Deb 2 March 1998 c.1013

Northern Ireland are currently studying in Scotland.¹⁰⁵ During the Report Stage of the Bill Lord Mackay of Ardbrecknish moved an amendment to clause 16 (now clause 19) to remove what he described as this ‘absolutely appalling anomaly’.¹⁰⁶

Lord Sewel of the Scottish Office defended the Government’s position during the debate on Lord Mackay’s amendment:¹⁰⁷

My Lords, we have indeed discussed this issue in Committee but we return to the basic and fundamental point that both the school and higher education systems in England and Scotland are different. It is interesting that a separate committee--the Garrick Committee--was set up in Scotland to look at the issues which Dearing was examining in relation to England and Wales. That is a recognition that the two systems are fundamentally different.

Garrick recognised that the fact that there were two systems could leave students who had followed a Scottish secondary education course at some disadvantage in relation to tuition costs for higher education because many of the courses at Scottish universities, for the same degree, are one year longer than elsewhere in the United Kingdom for comparable courses.

The Garrick Committee recommended that that issue should be addressed and the Government have done so by agreeing that Scottish students studying in Scotland will not be required to contribute to their tuition costs in the final year where the course is one year longer than the equivalent course in England, Wales or Northern Ireland. That is the point that we all understand. However, it is important to make clear what is the basis of the disagreement, if we have a disagreement, by understanding the basic position as it exists.

It does not follow that the same arguments can be advanced for students from elsewhere in the United Kingdom where the pattern of school education is different. I shall try to advance an argument that even the noble Earl will recognise as having some credibility. The nub of the argument is that the idea for compatibility between students

domiciled in England and Scotland is based on a misunderstanding because it falsely conflates two things: the first is the idea of intellectual development; and the other is the period of time necessary to cover the syllabus in any one discipline.

It is important to bear in mind in the Scottish context that, traditionally, Scottish students have gone to university one year earlier than English students. My own daughter is in what I believe to be a not particularly desirable position of having spent an additional year at school but still going to the University of Glasgow at the age of 17. That does not happen with any regularity in English universities.

Therefore, the reason that the four-year honours degree course exists in Scotland and is of value in Scotland for Scottish domiciled students who have come through the Scottish educational system is that their intellectual development has not reached the same stage by the time they leave school as is the case in England where students go to university aged 18 and have often gone through a two-year A-level course. In Scotland, students predominantly undertake a one-year higher course or, effectively, a two-term higher course. Therefore, there is a very strong case to persist with the four-year honours degree course for Scottish students.

English students, having undertaken a two-year A-level course, are that much further along the road of intellectual development than their peers in Scotland. In that case, the challenge is basically for the Scottish universities. That challenge is to recognise that students coming from the English school system and going into the Scottish higher

¹⁰⁵ *ibid*

¹⁰⁶ HL Deb 2 March 1998 c.1015

¹⁰⁷ HL Deb 2 March 1998 cc1016-17

education system should properly go in at what is the second year.

Many Scottish universities make provision in that respect. Indeed, it should be encouraged. As a former university teacher, I see no reason why it is not possible to cover the actual range of many disciplines in three years. I do not believe that any strong argument can be advanced against the possibility of covering an honours degree in three years. The reason it is not done in Scotland rests with the argument of intellectual development: they come there a year early, a year less prepared.

Therefore, the challenge is to the Scottish universities to ensure that they can be attractive to English domiciled students as regards coming in at the second-year level. Of course, there is a certain reluctance on the part of some Scottish universities to go down that road. I do not believe that I am being particularly cynical in suggesting that the possible reason behind persisting with a four-year degree course for English domiciled students is that it is a nice way of maintaining institutional income. I put it just like that as perhaps one of the reasons why some universities have not been too enthusiastic to make it possible for students to come in at the second year.

On the predicted fall off in applications to Scottish universities and the 'European paradox' he noted:¹⁰⁸

If one studies the predicted major drop in applications in Scotland from England, about which noble Lords opposite have been warning us, it will be seen that it has not occurred. The drop in English applicants is actually less than the overall drop--it is 5 per cent. compared with 6 per cent. When one compares the upcoming year with the year that is just going through, one finds a very interesting situation. One finds that applications were up on average by 8 per cent. last year, while this year they are down overall in Scotland by 6 per cent. So there is no fundamental evidence to suggest that the policy has actually put off students. What has happened is that there has been a less than compensating decline for the increase that took place last year. Clearly, if people applied last year, they are out of the system and so, naturally, there would be a drop this year.

Let us keep what the extra £1,000 means in perspective. I have put forward my suggestion of how universities may respond. It may well be proper for universities to respond and say that the four-year degree is something that they wish to market as a quality product for English domiciled students. They will be required to take an extra year. But they are already required to take an extra year over their degree courses than their fellow

students who applied to English universities. There is also a cost involved. The cost is in foregone income which is estimated at £16,000 a year. There is a cost in the additional year's maintenance which is about £3,000 a year. Therefore, we are already talking about an English domiciled student going on a four-year degree course in Scotland, which is already effectively carrying a cost of about £19,000 to £20,000 a year in one way or another. What we are saying here is that, yes, they will have to pay an extra £1,000 a year for the fee, which is equivalent to something like just over 5 per cent. of the additional cost they are already paying.

Reference was also made to the European paradox. I agree that it is a paradox, but the Government cannot be blamed for the situation. The matter is clear: we have sought legal advice--and, indeed, I have confirmed this--on the matter. We have received that advice and are confident that we have a robust position and can defend it robustly if there is any challenge in the courts. Therefore, there is no problem in terms of our position being incompatible with our European obligations.

¹⁰⁸ HL Deb 2 March 1998 c.1018-19

Lord MacKay's amendment was agreed to on a division.¹⁰⁹ It is expected that the Government will seek to overturn this amendment in the Commons.

5. Part-time students

Baroness Maddock for the Liberal Democrats moved an amendment to clause 16 (now clause 19) during the Committee stage, and also on Report, in an attempt to ensure that, in regard to financing, part-time students would be treated in the same way as full-time students and that these arrangements would be in place on or before 1st April 2000.¹¹⁰ Under the current arrangements part-time undergraduates have to make a contribution to their tuition costs and are not generally eligible for public assistance towards their living costs. The Dearing Committee found that there were disincentives to part-time study for unemployed people and those on low incomes.¹¹¹

During the Committee Stage of the Bill Baroness Blackstone, stated that the Government did not intend to 'extend the loan scheme to the generality of part-time students at this stage'¹¹² This option was rejected on the grounds of cost, some £147 million in 1995-96 prices by the year 2015-16, and the fact that 'a high proportion of part-time students are in employment and are therefore able to support themselves'.¹¹³ She emphasised the extension of eligibility for access funds to part-timers from 1998/99 and the inclusion in the 1998/99 funding package for the sector of £2 million for fee remission for part-time students in higher education who lose their jobs.¹¹⁴ The Baroness stated that the Government was reviewing the interaction between entitlement to benefits and part-time study and was also looking at ways to ensure that there are no financial disincentives to part-time study by those on low incomes.¹¹⁵

On Report Lord Whitty reiterated the fact that clause 16(2)(d) (now clause 19(2)(d)) allowed the Government to extend eligibility for loans to part-time students but stated that the Government had no intention of doing this 'at this stage'.¹¹⁶

Baroness Maddock's amendments were withdrawn

¹⁰⁹ Clause 19(7)

¹¹⁰ HL Deb 2 March 1998 cc 989-90

¹¹¹ *Higher Education in the learning society* (summary report), para 97

¹¹² HL Deb 22 January 1998 c.1623-4

¹¹³ *ibid*

¹¹⁴ *ibid*

¹¹⁵ *ibid*

¹¹⁶ HL Deb 2 March 1998 c.990

6. Disabled students' income

On Report Lord Addington moved an amendment to clause 16 (now clause 19) to ensure that future regulations would make provision for the disregard of disability benefits in the calculation of income for repayment purposes.¹¹⁷

Baroness Blackstone's response noted that the Government was 'totally in agreement with the spirit of this amendment' and assured that 'we shall ensure that disability benefits are disregarded for the calculation of income repayment purposes'.¹¹⁸ The amendment was not accepted as it stood but the Government undertook to 'take whatever steps are necessary to put in place fair arrangements...for disabled borrowers'.¹¹⁹

7. Independent student status

At the Committee Stage, and also on Report, amendments were sought to clause 16 (now clause 19) to provide for a student over the age of 18 to be assessed as an adult on the basis of his or her own income. Currently students are treated as independent if they meet one of the following conditions:

- if they are 25 or over before the start of the academic year for which they are applying for an award; or
- if they have been married for at least 2 years before the start of the academic year for which they are applying for an award; or
- if they have been supporting themselves for at least 3 years before the start of the first academic year of the course.

The amendments were sought on the ground that 'at 18, students are adults and must be treated as such, and that their right to loans and grants should be assessed on the basis of their income, not that of their parents or spouse'.¹²⁰

¹¹⁷ HL Deb 2 March 1998 cc 991-2

¹¹⁸ HL Deb 2 March 1998 c.993

¹¹⁹ HL Deb 2 March 1998 c.994

¹²⁰ HL Deb 2 March 1998 c.993

The Government argued against the amendment.¹²¹

The amendment, if accepted, would allow the means testing of grants and loans but only on the basis of an individual's income, not that of the parents or spouse. Means testing an individual's income without regard to the income of the household to which that individual belongs and from which he or she benefits, would be regressive and unduly expensive, as the intervention of the noble Baroness, Lady Carnegy of Lour, indicated. For example, as I highlighted in Committee, we estimate that ending means testing altogether might cost around £700 million per annum in the short term. That is money we can ill afford to divert from our higher education system; nor would it be right to reduce the support available to the poorest students in order to give additional subsidies to those who could well afford to do without them. This is a view shared by the Dearing Committee which also recommended maintaining the parental and spouse's contribution.

I accept that, as the noble Lord, Lord Tope, said, 18 year-olds are, for most purposes, adults in the eyes of the law. But in reality, as I am sure Members of your Lordships' House agree, most 18

year-olds are not fully independent of their parents and receive support from them in a variety of ways. I myself have had that experience and remember it from the size of my telephone bills at the time. This is particularly true of 18 year-olds whose sole activity is full-time higher education. Young people in this position are inevitably not economically independent, and it is not the function of the student support system to make them so. We believe therefore that where parents are able to continue to provide support by contributing to their child's living costs such support should be encouraged. This position is widely recognised across the world and indeed by many of our European friends. In some countries--Germany and Italy, for example--parents are under a legal obligation to maintain their children for as long as it takes the child to complete a course of vocational or professional education, irrespective of their age. In other countries--Austria and Italy, for example--this obligation does not cease until the child first becomes financially independent, whenever that is. I see no reason to fall completely out of step with the rest of the world in the way this amendment would have us do.

The amendments were withdrawn.

B. Clause 20 (Transitional arrangements)

Clause 20 (which applies to England and Wales) provides for transitional arrangements in relation to student support. In particular, it will enable the Government to implement its policy that existing students should complete their courses under the same student support arrangements that applied when they began their courses. It enables rights and liabilities under the existing legislation to be transferred to the Secretary of State or to another person or body.

¹²¹ HL Deb 2 March 1998 cc 994-5

The DfEE issued an explanatory note on the legal basis on which tuition fee contributions would be introduced in February 1998.¹²² Paragraphs 12-13 of this note explain how the saving provisions in clause 20 (which was originally clause 17) will operate:

It is not intended that local authorities should bestow awards on new entrants from 1999/2000 onwards. The 1962 Act will therefore need to be repealed before applications begin to be received for that academic year. In order to protect the position of continuing students once the Act is repealed, however, appropriate savings provisions will be put in place. These will provide that certain sections of the 1962 Act should continue to have effect in relation to continuing students, notwithstanding the repeal of that Act. Once all students covered by the savings provisions have passed through the higher education system, the provisions will automatically become spent.

Savings provisions are a standard legislative procedure and a commonly used way of managing the transition from one set of arrangements to another. In this case they will allow continuing students to retain their rights and liabilities under their existing mandatory awards whilst preventing local authorities from bestowing further awards on new students. Repealing legislation subject to savings provisions is not the same thing as repealing only part of the legislation. In this case, the latter approach would only be possible if the 1962 Act distinguished between new and continuing students, so that only the provisions dealing with new students needed to be repealed. Because it does not do so, it is necessary to repeal the whole of the legislation whilst providing that it shall continue to have effect in relation to continuing students.

C. Clause 21 (Imposition of conditions as to fees at further or higher education institutions)

Clause 21 gives the Secretary of State power to require, as a condition of giving grant to the Further Education and Higher Education Funding Councils for England and Wales, that they should in turn impose a condition on the grant that they give to further and higher education institutions. A condition on a grant given by a Further Education Funding Council would require an institution to charge certain students no fees at all. A condition on a grant given by a Higher Education Funding Council would require an institution to charge certain students fees at the level of the maximum grant available to them for the payment of fees, i.e. £1,000 per year.¹²³

The Government has emphasised that clause 21 will not give it power to set the fees charged by higher education institutions.¹²⁴

'It is and always has been, for higher education institutions to charge fees to students. The Government does not have the power to charge tuition fees; nor does it intend to take such a power.'

¹²² *Higher Education Tuition Fees: Note by the DfEE*, Deposited Paper /3 5938

¹²³ Subject to annual uprating. In some cases the maximum grant available will be £500, e.g. for students on sandwich courses in their placement year.

¹²⁴ *DfEE Higher Education Tuition Fees*, Deposited Paper /3 5938

In effect, clause 21 would give the Government a financial 'lever' over institutions that opt to charge top-up fees, i.e. fees that exceed the maximum financial support available from public funds for fees in the case of full-time home undergraduates.

The issue of charging students 'top-up' fees first came to the fore in the universities' reaction to the 1995 Budget when there was a reduction in capital spending for 1996/97. It was hotly debated between November 1995 and January 1996. However at the Main Committee Meeting of the CVCP on 2 February 1996 no vote was taken on proposals to charge university entrants £300. Instead, the CVCP warned that if the immediate crisis in university funding precipitated by the 1995 Budget was not addressed in the 1996 Budget, some universities might be forced to charge students an admissions levy. The previous Government's reaction to the universities' concern was to appoint Sir Ron Dearing to chair the National Committee of Inquiry into higher education.

Universities have the power to charge 'top-up' fees if their governing bodies agree the adoption of such a policy. Any students that may be affected by such a change in policy must be pre-warned. The Court of Governors of the London School of Economics agreed by a two-to-one majority in December 1996 that fees could be charged from September 1998 if financial circumstances required it. Seventeen other universities reportedly included disclaimers in their 1997/98 prospectuses stating that students starting in 1998 may have to make a contribution towards their fees by the end of their three year courses.¹²⁵

1. Universities' academic freedom

This clause has proved highly controversial. Particular concern has been expressed in relation to the potential scope it may give the Government to interfere with the academic freedom of universities in a number of respects. In Committee Baroness Blackstone sought to clarify the purpose of clause 18 (now clause 21):¹²⁶

During our debate at Second Reading a number of Members of your Lordships' House expressed concern about Clause 18 and about the breadth of powers that they believed the Government were seeking. I sought then to provide reassurance that what we were seeking was simply a reserve power to require, through conditions of grant, that universities and colleges limit the fees that they charge to certain students, essentially home and EU full-time undergraduates and PGCE students.

We see a need for such a reserve power in order to be able to reassure students and their parents that tuition will continue to be free for home and EU full-time undergraduates and PGCE students from lower income families and that parents will be expected to contribute no more than under present arrangements.

We also believe that students should choose higher education institutions and courses on the

¹²⁵ 'Top universities to charge students', *Sunday Times*, 29 December 1996

¹²⁶ HL 22 January 1998 cc1726-8

basis of what would be most appropriate for their needs, rather than on the cost of tuition; but it is not our purpose to control the fee levels generally for part-time students, postgraduate students or overseas students for whom we make no direct financial support available, nor are we seeking power for the Secretary of State to set university fees generally.

I undertook to bring forward clarifying amendments to Clause 18 at Committee stage with a view to ensuring that our intentions were quite clear, and I have now tabled a number of amendments to fulfil that undertaking.

Amendments Nos. 103 and 105 make provisions for the classes of student and types of course that are to be covered by any condition controlling top-up fees on higher education courses to be prescribed in regulations rather than specified by the Secretary of State in conditions. I know that noble Lords have expressed reservations about approving powers for the Government to make regulations without knowing the content of such regulations. We have therefore placed in the library a first draft of the regulations that we would seek to make under Clause 18 if Members of your Lordships' House agree that we should do so. The draft will no doubt need further refinement in the light of consultations with the CVCP, but it should serve to indicate that the classes of student we wish to protect from top-up fees are, broadly speaking, home and EU students who have not previously received public financial support to undertake higher education. Universities will continue to be able to charge higher fees to those home students who have exhausted their entitlement to public financial support on a previous full-time course.

I hope that this will reassure the noble Lord, Lord Soulsby. I am afraid that he is not in his place. He expressed concern at Second Reading about veterinary schools' continuing power to charge higher fees to self-financing students. Universities will also be able to continue charging higher fees to overseas students. Amendment No. 109 puts this beyond doubt by providing on the face of the Bill that conditions may only control fees paid by students connected with the United Kingdom as determined by regulations under the Education (Fees and Awards) Act 1983.

Conditions may not therefore be used to prevent institutions from charging higher fees for overseas students, as permitted by the Education (Fees and Awards) Regulations 1997 currently in force.

Amendments Nos. 106 to 107 make it clear that conditions can only be imposed in relation to a class of students if the maximum amount of grant to fees has been prescribed to such students under regulations made under Clause 16(2)(b). In other words, if no grant is to be made available under such regulations for, say, postgraduate or part-time fees, then a condition cannot be imposed to control postgraduates' or part-timers' fees.

The draft regulations make clear that the courses we intend to be subject to conditions of grant are the same as those courses in publicly funded universities and colleges for which mandatory awards are currently available and for which in future grants for fees are likely to be provided. We therefore intend to refer to full-time or sandwich undergraduate courses leading to a first degree or diploma and courses of initial teacher training including PGCE courses whether part-time or full-time.

So as to leave no room for doubt, Amendment No. 110 provides specifically that conditions may not impose controls on fees for part-time or postgraduate courses, other than courses of initial teacher training--that is, PGCE courses.

Finally, Amendment No. 104 removes the scope for the Secretary of State to specify the types of fees covered by condition. Fees are now just defined in Clause 20. We recognise that that definition may not be perfect. We do not, for instance, intend to restrict universities and colleges in the charges that they make for board and lodging or field trips and are therefore willing to consider amending as appropriate that definition of fees in the light of further consultations with the CVCPs. In the meantime, I hope that Members of the Committee will be reassured about our intentions and accept the amendments. Amendments Nos. 121 to 126 make identical amendments to the parallel provisions in the Scottish Clause 22. We commend them to the Committee also. I beg to move.

In response to concerns raised over the implications of clause 21 (originally clause 18) for universities' academic freedom the Government amended it to ensure that only a financial

penalty could be imposed should a university decide to introduce top-up fees.¹²⁷ On Report the Government moved a further amendment to clause 18 (now clause 21) to ensure that conditions on a grant to control top-up fees could not be framed by reference to courses in particular subjects.¹²⁸

That makes it absolutely plain that the Secretary of State cannot, through conditions controlling top-up fees, affect the freedom of universities to decide which courses to offer, which subjects to teach or which areas of research to pursue. He can, thus, prescribe first-degree courses or courses leading to a diploma as those that can be covered by conditions on grant controlling top-up fees. But he cannot name in those conditions particular areas of study or research--whether any branch of medicine, science, technology, social science, arts or humanities.

The only exception is initial teacher training; and it has been necessary to deal with courses in initial teacher training separately for technical reasons. That is because not all courses of initial teacher training lead to a first degree. Some courses lead to a postgraduate certificate. Other courses--for, say, intending craft instructors who are seeking a qualification to teach in FE colleges--lead to an undergraduate certificate below first-degree level. We want to ensure that, whatever the level of the course, students on courses of initial teacher training should still receive financial support for fees from public funds. We have made clear all along that we need to be able, if necessary, to control any top-up fees that may be charged to students on those courses. That is why, paradoxical though it may seem, we have made special provision in this amendment for courses of initial teacher training to ensure that they are treated like first degree courses and not differently.

However, so as to ensure, again, that the Secretary of State cannot, through conditions controlling top-up fees, interfere in universities' freedom to decide which courses of initial teacher training to offer, this amendment prevents him from singling out such courses by subject. Thus the relevant regulations could prescribe that conditions might apply to all courses of initial teacher training. But they could not prescribe that conditions might apply to courses of initial teacher training specialising in any particular subject--such as social science--but not in another, such as the physical sciences.

I made plain in Committee the Government's commitment--and it is a total commitment--to upholding the principle of academic freedom. I hope that the amendment before the House speaks louder than any words that I could utter and enshrines that commitment in the Bill. For its part, the Committee of Vice-Chancellors and Principals has made clear in its briefing that,

"government amendment (No. 60 on the Marshalled List) meets universities' concerns about the protection of academic freedom".

I very much hope that it will also meet the concerns of your Lordships' House. I beg to move.

¹²⁷ HL Deb 22 January 1998 c.1728-9

¹²⁸ HL Deb 2 March 1998 c.1047

Research Paper 98/33

An amendment moved by Earl Russell on Report to remove clause 18 (now clause 21) from the Bill was negatived on a division.¹²⁹

There is a body of opinion that believes that certain universities should be able to charge additional fees in order to maintain levels of academic excellence:¹³⁰

'There is an emerging internal consensus that the people who should fix fee levels are the universities themselves, albeit within a strongly regulated framework. The best institutions face higher costs - not least of staff and research facilities such as laboratories and libraries. The universities themselves are best-placed to assess their costs and determine appropriate action to maintain quality. If the Government is not prepared to pay the real cost of the best institutions, students will have to make up the difference. Given the enhanced earning potential of a graduate from a top university and universal availability of generous income-contingent loans, each student could decide how much to invest in his or her future.'

2. Oxford and Cambridge

In Committee and on Report Baroness Perry of Southwark sought to highlight problems with the wording of clause 18 (now clause 21) in regard to the universities of Oxford and Cambridge. Her concern stems from the fact that the clause gives the Secretary of State power to require the funding council to sanction any university if either it, or an institution connected with it, charges fees which are more than the prescribed amount. Baroness Perry argued that the colleges of Oxford and Cambridge are connected with the universities but that the governing bodies of the universities have no power over the fees charged by the individual colleges.¹³¹

In response Lord Whitty undertook to look again at clause 18 (now clause 21) and to consider amending the subsection that refers to fees payable to connected institutions 'to clarify the links between funding council grants for certain students and the aggregate fees that may be charged to those students by both parent universities and any institutions connected with them with a view to ensuring that institutions can be penalised for top-up fees charged to students only if they are claiming funding council grants for those students.'¹³²

Baroness Perry raised the same issue at Third Reading. Lord Whitty advised that the Government was still considering an amendment to clause 18(9) (now clause 21(9)), which refers to fees payable to connected institutions, and that an amendment would be tabled in the Commons.¹³³

¹²⁹ HL Deb 2 March 1998 cc 1049-68

¹³⁰ 'Universities in the first division should charge top prices', *Guardian Higher*, 16 September 1997

¹³¹ HL Deb 2 March 1998 cc 1041-2

¹³² HL Deb 2 March 1998 c.1045

¹³³ HL Deb 10 March 1998 cc 175-82

3. The legal basis for charging tuition fees

During the passage of the Bill through the Lords confusion was expressed over how the Bill provided for students to be charged tuition fees. The legal basis for requiring students to pay tuition fees was explained by Baroness Blackstone during the Committee stage:¹³⁴

The Government will not be legislating to require students to pay tuition fees because they have no need to do so. It is individual universities and colleges which charge tuition fees for students. As the Committee is aware, they are quite free to do so. If they were not, there would be no need to include in the Bill Clause 18, which provides a reserve power to control top-up fees in certain circumstances.

What the 1962 Act does is require local education authorities to make mandatory awards to certain types of student to help them with the costs of attending their courses--that is the fees charged by their university and their maintenance costs. In practice the position in recent years has been that universities have charged fees at precisely the level of the fee element of the mandatory award so that students have not been expected to contribute personally. Legally speaking, the university has still been charging a fee to the student but that fee has been met by the local authority through the mechanism of the mandatory award.

What we are proposing to do in 1998 is provide for maximum support of £1,000 towards fees and then means test that support so that the full £1,000 is available only to students from lower income families. It will remain for universities and colleges to set their own fee levels, though they will need to do so in the knowledge that no student will receive more than £1,000 in financial support

for fees from public funds. It is precisely because the Government do not set university fees that we are seeking reserve powers in Clause 18 to prevent universities from charging more than the maximum level of support available to students if necessary. If the Government set university fee levels there would be no need for Clause 18.

In legal terms, what our proposals mean is that the fee element of the mandatory award will be means tested, just as the maintenance grant is now. The power to do this is set out in section 1(5) of the 1962 Act, which provides that regulations shall,

"prescribe the circumstances in which [the award] is to be payable, and the amount of the payment or the scales or other provisions by reference to which that amount is to be determined".

That is the provision under which maintenance grants have been means tested since 1962. There is no reason why the means test cannot also apply to the fee element of the award. This is precisely what was done between September 1962, when mandatory awards were introduced, and August 1977. The powers in Clause 16 replace those in the 1962 Act and allow us to make regulations to the same effect .

¹³⁴ HL Deb 26 January 1998 cc 59-60

A detailed explanation of the Government's policy in relation to higher education tuition fees from the 1998/99 academic year onwards is contained in a note prepared by the DfEE.¹³⁵

At Third Reading Lord Tope, for the Liberal Democrats, moved an amendment to delay the introduction of tuition fees for students until on or after 1st June 2002.¹³⁶ Baroness Blackstone pointed out that universities, rather than the Secretary of State, charge tuition fees and that the only way that the Government could meet the terms of the amendment would be to provide grants to meet the cost of fees on behalf of students.¹³⁷ Lord Tope's amendment was negatived on a division.

At the various stages of the Bill's passage through the Lords several amendments were moved concerning how the income derived from tuition fees would be used by higher education institutions and to ensure that this income would be disregarded for the purposes of calculating grant for the HEFCs.

At Third Reading, in response to an amendment moved by Lord Tope,¹³⁸ Baroness Blackstone stated that 'the university or college will keep all that fee income, whatever its source. Universities will not surrender any of their fee income, either to the Government or to the HEFC. It will of course be for universities themselves to decide on how to use fee income from higher education fees. But there can be little doubt that it will essentially be spent on providing courses of higher education and for connected purposes'.¹³⁹ On the question of disregarding tuition fee income for calculating grant for the HEFCs, Baroness Blackstone advised:¹⁴⁰

Some £3 billion of public funds for teaching higher education students will go through the funding councils in 1998-99. But, in addition to that, about £1 billion of public funds will continue to flow through support for tuition fees next year. Even when the new funding arrangements reach steady state, we estimate that just over half of universities' fee income will continue to be paid out of support from public funds for tuition fees. We clearly cannot leave such a large sum of taxpayers' money out of account when calculating the public funds for higher education that flow through the other channel of public support; that is, through grant to the HEFC. Nor can the funding council leave out of its calculations the fee income

that is received by institutions, as the third part of the amendment would require. That is primarily because the funding council needs to ensure fairness in funding.

The HEFCE is aiming to fund similar activities at similar rates and to offer a standard price for each full-time equivalent student place. At present, tuition fees are paid on behalf of home full-time undergraduates up to maxima at three different levels to reflect the broad subject area studied. Next year, support will be available up to just one maximum level of fee, whatever subject the student is studying. As a result, it will be necessary for the funding council to make adjustments to the

¹³⁵ *Higher Education Tuition Fees*, Deposited Paper /3 5938

¹³⁶ HL Deb 10 March 1998 cc 155-6

¹³⁷ HL Deb 10 March 1998 c.157

¹³⁸ HL Deb 10 March 1998 cc 182-3

¹³⁹ HL Deb 10 March 1998 c.185

¹⁴⁰ HL Deb 10 March 1998 cc 185-6

grant it provides to ensure that some institutions which concentrate on providing costly subjects do not lose out in consequence and that others which concentrate on cheaper subjects do not gain unfairly.

All that said, I should emphasise that the aim is that universities and colleges should receive similar support in grant and fees to fund similar activities. Institutions may receive more funding to educate a student in one subject than another

because of the extra costs involved, but all institutions should receive broadly similar amounts to teach the same subjects.

In short, therefore, the amendment is unnecessarily restrictive in the requirements that it seeks to place on both the Secretary of State and the funding councils. But there should be no question that universities and colleges will benefit financially as a result of income raised from students' payment of tuition fees.

Lord Tope's amendment was negatived on a division.

D. Clause 22 (Expenditure eligible for funding)

Clause 22 amends section 65 of the *Further and Higher Education Act 1992* by inserting subsections 3 (A) and 3 (B) to allow the Higher Education Funding Council (HEFC) to give funding to higher education institutions for them to distribute to connected institutions. The institution that receives funding direct from the council must obtain the Council's consent before allocating any of that funding to a connected institution. The clause has retrospective effect.

The clause, which has been discussed with HEFC representatives and made with their agreement, regularises the position of a small number of institutions which receive funding directly from an HEFC funded institution. It is essentially a clarification of the statutory basis and, according to the financial memorandum, is not expected to lead to any government expenditure.¹⁴¹ The clause was not debated during the Lords stages.

E. Clause 23 (Interpretation of Chapter I)

Clause 23, which applies only to England and Wales, defines the terms used in that part of the Bill which deals with financial provision for further and higher education.

The Government amended clause 20 (now clause 23) on Report to clarify the definition of fees. Explaining the amendment Baroness Blackstone stated:¹⁴²

¹⁴¹ HL Bill 47, p.iv

¹⁴² HL Deb 2 March 1998 cc 1074-75

This amendment makes it clear that we expect the essentials of any course of higher education to be covered by the basic fee for which means-tested support will be available up to a maximum of £1,000 next academic year. That sum is intended to cover all tuition costs and any administrative costs associated with the processes of admission (or matriculation), registration (or enrolment) and graduation. We would thus not expect students to pay any extra for admission to an institution, for annual registration with that institution, for tuition during their course or for graduation. We accept that a university may charge for the costs of providing a social occasion to celebrate the awarding of a degree, but there should be no question of a university's charging a fee to a student for the actual award of a degree.

If universities or colleges charged extra for any of those essential items--admission, registration, tuition or graduation--the Secretary of State would have to consider whether or not to seek to control such fees by exercising his reserve power to place conditions on grant under Clause 18.

The amendment also makes it clear that, on the other hand, there are certain costs that the Government do not consider to be covered by the basic fee, and so universities may charge separately for these. They include fees charged by external awarding or accrediting bodies; board and lodging; and the cost of special ceremonies. So any university which charged extra for a graduation ceremony or any college which levied charges for board and lodging would not run the risk of having a condition placed on its grant under Clause 18.

Let me make it clear that this amendment has no implications for college fees and that the outcome of our review of Oxbridge fees is an entirely separate matter. That review follows the Dearing Report which pointed out that college fees represented a substantial addition to the standard funding for higher education institutions and proposed that the Government should review them. It also recommended separately that there should be no variations in the level of public funding for teaching, outside modest margins, without very good reasons. We therefore asked the HEFCE to conduct a review of college fees, taking into account its proposed new teaching funding method

and the relevant points in the Dearing Report. We are still considering that advice and hope to be able to make an announcement shortly.

As the noble Lord, Lord Renfrew, said--I am sorry that he is not in his place--it is true that an early draft of the government amendment, which we showed to the CVCP, contained a reference to college fees. But we concluded that it was technically defective because either college fees fall into the first category of fees in this government amendment, where we do not wish to see top-up fees charged--that is, tuition fees and the like--or, in the case of board and lodging, they fall into the other category of fees where we believe that institutions should be able to decide on an appropriate level of charges. So we concluded that it would be tautologous to mention college fees separately. That early draft has now been revised; and noble Lords will see that the government amendment on the Marshalled List has no reference to college fees in order to avoid technical defects. But let me stress again that the amendment does not in any way pre-empt the outcome of the review of college fees.

Finally, the definition allows the Secretary of State to prescribe in regulations other fees that universities and colleges would be able to charge without being liable to a condition on their grant controlling such fees. Those fees could include fees for field trips and possibly fees for materials, which the noble Earl, Lord Limerick, raised in Committee. This provision for regulations will allow us to consult widely with appropriate representative bodies such as the CVCP and the Committee of University Chairmen before drawing up a detailed list. It would also allow for amendment of that list in due course if it appeared that we had omitted some important fee.

This amendment clarifies which fees universities may or may not charge in addition to the basic fee, for which financial support will be available to students. It also allows for further elucidation through regulations. I beg to move.

F. Clause 24 (Grants and loans: Scotland)

The policy underlying the Scottish provisions is to maintain the present broad parity of treatment with England and Wales in terms of student support, while allowing for particular Scottish circumstances.

Clause 24 (previously clause 21) amends the existing student support provisions in section 73 of the *Education (Scotland) Act 1980* to enable the Secretary of State for Scotland to pay loans as well as grants under this provision. The Secretary of State's powers and duties reflect the corresponding provisions for England and Wales set out in clause 19 of the Bill.

The clause includes provisions for the transfer to the Secretary of State, or such other person as may be specified, of rights and liabilities under the *Education (Student Loans) Act 1990*. Unlike the position in England and Wales, the rights and liabilities in relation to student grants already rest with the Secretary of State for Scotland. These powers are exercised directly rather than through the education authorities.

Clause 24 provides for any increase above inflation in the maximum level of grant for fees to be subject to the affirmative resolution procedure; any increase at or below the rate of inflation will be subject to the negative resolution procedure. It also makes provision for enabling loan repayments to be collected with the assistance of the Inland Revenue.

As with the provisions relating to England and Wales, on Report the Government amended clause 21 (now clause 24) to ensure that the rate of interest charged for loans will be no more 'than is necessary to maintain the value of loans in real terms'.¹⁴³

On Report Baroness Carnegy of Lour sought an assurance that the definition of 'fees' in the Scottish clauses would be amended in line with amendments to the English clauses.¹⁴⁴ Lord Sewell gave an assurance that the Scottish Office intended to reach the same policy objective as that achieved by Baroness Blackstone but that a different route would be followed owing to the different structure of the relevant Scottish legislation.¹⁴⁵

Clauses 24 and 25 will amend existing legislation that will remain in force; therefore, in Scotland the transitional provisions in clause 20 are required only in respect of loans made under the *Education (Student Loans) Act 1990*; these are provided for in clause 24(2)(2)(a).

¹⁴³ HL Deb 2 March 1998 c.1075

¹⁴⁴ HL Deb 2 March 1998 c.1076

¹⁴⁵ HL Deb 2 March 1998 c.1077

G. Clause 25 (Imposition of conditions as to fees at further and higher education institutions in Scotland)

Clause 25 (previously clause 22) provides that the power of the Secretary of State for Scotland to impose conditions in relation to grants paid to the Scottish Further Education Funding Council and the Scottish Higher Education Funding Council will include the power to impose a condition requiring both Funding Councils to impose a condition in relation to grants, loans or other payments paid by them to further education colleges and higher education institutions.

Clause 25 effectively introduces the same provisions for controlling top-up fees in Scotland as clause 21 does in England and Wales. It was amended on Report to provide similar reassurances to further and higher education institutions, as were included in clause 21 for England and Wales, in regard to the exercise of academic freedom.¹⁴⁶

On Report Lord Sewell gave an assurance that the Government had no intention of imposing conditions on the academic conditions for the selection of university staff or the admission of students; he undertook to give this issue further attention.¹⁴⁷

H. Clause 31 (Northern Ireland)

This clause (previously clause 28) will enable an Order in Council to be made under paragraph 1(1)(b) of Schedule 1 to the *Northern Ireland Act 1974*, for the purposes of making provision in Northern Ireland parallel to that set out in clauses 19 and 21 of the Bill. The Government intends to make such an Order so that the legal position in relation to students from Northern Ireland from 1999/2000 onwards is put on a parallel footing to that of students from elsewhere in the UK.¹⁴⁸

¹⁴⁶ HL Deb 2 March 1998 c.1078-9

¹⁴⁷ HL Deb 2 March 1998 c.1079

¹⁴⁸ *Higher Education Tuition Fees: Note by the DfEE*, Deposited Paper 3/5938

V Right to time off for study or training

Part III of the Bill introduces a right to paid time off work for unqualified 16 and 17 year olds so that they can study or train towards basic level 2 qualifications.

A. Background

The Labour Party proposed a right to study for unqualified 16-17 year olds in its “Road to the Manifesto” policy document, *Target 2000: Labour’s plan for a lost generation*, issued in May 1996. This suggested a “new approach, based on the target of getting all our young people to intermediate level qualifications – including key skills – by the year 2000, unless they have a specific special educational need which prevents it”. The first two points of the Target 2000 programme were:

- “1. Everyone under 18 who does not have Level 2 qualifications (including key skills) should be studying, normally off the job, for at least six hours (one day) a week or equivalent.
2. Employers will have an obligation to ensure that this happens for their employees”

The Labour Party’s Manifesto for the 1997 General Election did not say that employers would be obliged to make sure this happened: rather it promised that these young people would be given the right to study.¹⁴⁹

“Nearly a third of young people do not achieve an NVQ level two qualification by age 19. All young people will be offered part-time or full-time education after the age of 16. Any under-18 year old in a job will have the right to study on an approved course for qualifications at college. We will replace the failed Youth Training scheme with our new Target 2000 programme, offering young people high-quality education and training.”

On 31 July 1997, the DfEE initiated a consultation on how the pledge to give under-18 year olds a right to study might be implemented.¹⁵⁰ The results were summarised in a Regulatory Appraisal, *Investing in Young People: Time for Study or Training*, published in November 1997.¹⁵¹ This reported that:

“Replies were broadly supportive of the underlying aims and objectives, provided that implementation was both sensible and flexible. Issues raised included the relationship with, and need for coherence

¹⁴⁹ *New Labour because Britain deserves better*, p 19

¹⁵⁰ Letter on *Investing in Young People* from Rob Wye, Head of Training Young People Division, to 30 organisations, 31 July 1997

¹⁵¹ Library Location CCA 97/136

Research Paper 98/33

with other initiatives; the balance between rigour of approach and maximum local flexibility and responsiveness; the nature of the impact on the youth labour market, and the inter-action with any proposals for a National Minimum Wage.

Other key issues related to overall marketing and presentation, especially to small businesses and to those young people who found “education/study” alienating; to the scale and nature of the funding available; and to the need to build on the best of what already existed. There was a call for flexibility, and for imaginative practical solutions – especially from those parts of the country where access to college provision per se was severely limited by geography, and the burden of travel costs and time off would be prohibitive to young people and small businesses alike.”

Following the consultation, the Government decided to establish an entitlement for the young employee via legislation. The entitlement would no longer be to off the job training in colleges but to training which could be “work-based on site (perhaps using NVQs); or with another employer or training provider; or by open or distance learning; or attendance at college.” The *Regulatory Appraisal* identified the benefits and costs of the legislative approach:

“3. The key benefits are first to employers, in terms of either existing employees who are more productive, or a larger pool of more skilled, better trained young people from whom it is easier to recruit; second, to the young people themselves, in terms of acquiring skills and qualifications that will give them longer term employability; and third, to society as a whole, in terms of both improved competitiveness and the wider social benefits, such as a lower risk of exclusion and the costs that would follow.

4. These benefits are offset by the costs of the investment. These are (UK, full year, steady state) estimated as:

a) Costs to Government: £40m pa for extra education/training provision
£12.5m gross pa for Careers Service advice & support
£0.07m pa ACAS/Industrial Tribunal costs

b) Costs to employers: £60m-£130m compliance costs.

These are full year costs – the legislation is to be implemented as and when Ministers agree resources are available, and the costs are expected to be phased in.”

The *Regulatory Appraisal* also gave an idea of the numbers involved and the industries which would be most affected by the proposal. At the end of 1996, in the UK, there were an estimated 115,000 young people aged 16-17 in employment, not qualified to level 2, and not working towards a level 2 qualification. Between 80,000 and 130,000 businesses could be affected by an entitlement to time off for study or training. Of these, as many as 80% may have fewer than 25 employees. The main business sectors likely to be affected are manufacturing (30% of young people); wholesale, retail and motor trades (24%); hotels and restaurants (13%); and other service sectors (24%).

This right to study forms part of a wider initiative, known as Investing in Young People (IIYP), which is designed to “help young people to achieve the qualifications they will need

in the workplace.” It was launched by David Blunkett as a ten-point action plan on 9 December 1997.¹⁵² The eighth point involves “legislating to ensure that all young employees - with the support of their employer - can undertake education and training up to NVQ Level 2”. The full list is reproduced below:

“All schools to set targets for improving attainment at age 16;

Widening the range of vocational options and the work relevance of the curriculum for 14 - 16 year olds;

Introducing a single school leaving date at the end of June each year, so that no child should be able to leave school, in the year they become 16, until they have had a chance to sit for GCSE or other external examinations;

Introducing measures to help young people plan and manage their own learning - including a new National Record of Achievement;

Introducing a Learning Card, promoting young people's entitlement to continue in learning post-16;

Refocusing the Careers Service to target support and guidance at those who need it most;

Developing the New Start strategy to re-engage disaffected young people from age 14 upwards in learning, where they have already dropped out or are in danger of doing so;

Legislating to ensure that all young employees - with the support of their employer - can undertake education and training up to NVQ Level 2.

Introducing National Traineeships as the high quality work-based route to NVQ Level 2, including key skills, while making an extra £10 million available in 1998/99 for Modern Apprenticeships.

Raising Standards by improving the quality of all post-16 provision: setting targets, identifying success, spreading good practice and eliminating failure.”

B. The Bill

The legislative vehicle chosen for the introduction of this right is Part III of the present Bill which establishes a *Right to Time Off for Study and Training* by means of an amendment to the *Employment Rights Act 1996* [ERA]. Part VI of the ERA already provides a right to time off work for:

- public duties (such as acting as a justice of the peace, or a member of a local authority, statutory tribunal, police authority, board of prison governors or prison visiting committee, NHS trust or school governing body) [section 50];
- looking for work or arranging retraining, if under notice of redundancy [section 52]

¹⁵² DfEE press release, 9 December 1997, *Blunkett unveils target plan to boost skills*

Research Paper 98/33

- ante-natal care [section 55]
- work as a trustee of an occupational pension scheme [section 58]
- acting as an employee representative in consultations on collective redundancies or transfers of undertakings [section 61]

In all cases except the first (public duties), the time off must be paid.

Separate legislation provides similar rights to time off for trade union officials (paid), trade union members (unpaid) and safety representatives (paid).¹⁵³

Clause 26 of the *Teaching and Higher Education Bill* inserts a new section 63A into the ERA which would give a right to time off to study for a “relevant qualification” to employees who are aged 16-17, are not receiving full time secondary or further education, and have not attained a standard of achievement to be prescribed by the Secretary of State. An employee who is 18 but who began such a course of study before that age will also have the right to time off to enable him to complete his course. The amount of time off, and the occasions on which and any conditions subject to which it may be taken, will be such as “are reasonable in all the circumstances having regard, in particular, to -

- (a) the requirements of the employee’s study or training, and
- (b) the circumstances of the business of the employer or the principal and the effect of the employee's time off on the running of that business.”

A Government amendment agreed in the Lords, and sought by the CBI, makes it clear on the face of the Bill that the training may take place on the employer’s premises.¹⁵⁴

The standard of achievement below which young people will qualify for the right to time off and the qualifications which will signal that that standard has been achieved, are to be prescribed by Regulation. A DfEE memorandum explains that it is too early to give precise details of how the Regulation-making power will be exercised.¹⁵⁵ Final decisions on two Consultation Papers, *Qualifying for Success* and *Targets for our future*, are still awaited. But

¹⁵³ *Trade Union and Labour Relations (Consolidation) Act 1992*, sections 168-173 and the *Safety Representatives and Safety Committees Regulations 1977* SI 500 and *Health and Safety (Consultation with Employees) Regulations 1996* SI No 1513

¹⁵⁴ HL Deb 26 January 1998, cc 25-26

¹⁵⁵ DfEE, *Teaching and Higher Education Bill: Clause 23: Right to time off for young persons for study or training: a memorandum on the approach to the Regulations*, January 1998, Library Location Dep/3 5829

the general aim is that the standard of achievement should be level 2 qualifications, i.e. five good GCSEs, and Intermediate GNVQ or an NVQ level 2, and that the Qualifications and Curriculum Authority will be the guardian of standards for these qualifications in England.

Clause 27 inserts new sections 63B and 63C into the ERA. These sections provide that the young employee must be paid by his employer at the normal hourly rate while he is taking time off to study. If the employer unreasonably refuses to allow him time off or fails to pay him the full amount, the employee has the right to take him to an employment tribunal.¹⁵⁶ If the tribunal upholds the employee's complaint, it must make a declaration to that effect and order the employer to pay the employee the amount of money he would have received if his request for time off had been granted or to make the correct payment.

C. The debate in the Lords

These clauses (which were previously clauses 23 and 24) were debated in the Lords in Committee on 26 January 1998 and on Report on 2 March 1998.¹⁵⁷ There were no divisions, but Conservative peers opposed the measure on two grounds: that it placed another burden on business, and that it might prove counter-productive by deterring employers from taking on the very people it sought to help. Apart from the costs which employers would incur in releasing the young workers, they would also face added bureaucracy if internal training courses which they provided themselves had to be altered to fit in with the requirements of external assessors. Several peers argued that an employer was unlikely to recruit a 16 or 17 year old without level 2 qualifications who could claim the right to time off, if he also had the choice of an 18-24 year old on the New Deal who came with a subsidy of £60 a week and a training payment of £750, or a 16 or 17 year old who already had level 2 qualifications and so would not be entitled to time off. Baroness Blackstone, for the Government, recognised that there was "a potential issue here concerning the interaction of two important commitments", but thought it would be a local rather than a national issue. She did assure the Lords that the Government would "monitor closely the impact of the New Deal" and would "be able to assess its interaction with other policies".¹⁵⁸

Liberal Democrat peers argued that the right to time off for training should not be confined to 16-17 year olds without level 2 qualifications, but should be extended to all in the age group. Lord Whitty, for the Government, replied that it was a matter of priorities and that their principal aim was to bring everyone up to level 2.¹⁵⁹ Baroness Blackstone stressed that the Government was concerned "that large numbers of young people in the UK each year will

¹⁵⁶ Industrial tribunals will be renamed "employment tribunals" under the *Employment Rights (Dispute Resolution) Bill [HL]* which has nearly finished its passage through Parliament

¹⁵⁷ HL Deb 26 January 1998, cc 10-38 and HL Deb 2 March 1998, cc 1081-1084

¹⁵⁸ HL Deb 26 January 1998, c 33

¹⁵⁹ *ibid*, c 19

Research Paper 98/33

continue to fail to reach level 2, the very basic level of attainment which is an absolute prerequisite for sustained and future employability.”¹⁶⁰

Lord Jenkin of Roding moved an amendment designed to ensure that disabled 16 and 17 year olds received the support they needed to gain access to basic training. He withdrew it after Baroness Blackstone had assured him that the Government wished to ensure that young people with disabilities were able to take full advantage of all the support that was already available to help them gain access to training and would be saying “more on this important matter when the Bill reaches another place”.¹⁶¹

¹⁶⁰ *ibid*, c 33

¹⁶¹ *ibid*, c 23